DOCUMENT RESUME

ED 273 721 UD 025 092

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TITLE Statement before the Subcommittee on Civil and Constitutional Rights Committee on the Judiciary, House of Representatives, on the Operations of the United States Commission on Civil Rights.
INSTITUTION General Accounting Office, Washington, D.C.
PUB DATE 25 Mar 86
NOTE 128p.
PUB TYPE Legal/Legislative/Regulatory Materials (090) -- Reports - Descriptive (141)

EDRS PRICE MF01/PC06 Plus Postage.
DESCRIPTORS *Administration; Affirmative Action; Employment Practices; *Federal Government; Federal State Relationship; Legal Responsibility; *Money Management; *Public Agencies
IDENTIFIERS *Commission on Civil Rights

ABSTRACT

This report presents the findings of an investigation and audit of certain aspects of the operations of the United States Commission on Civil Rights commissioned by the Committee on the Judiciary, Subcommittee on Civil and Constitutional Rights. First, each allegation made against the Commission is briefly outlined and then findings are discussed in greater detail in attachments to the report. Lack of complete records hampered the audit. The aspects studied were: (1) employment trends in the Comission on Civil Rights; (2) use of consultants, temporary, and Schedule C employees; (3) referrals from state employement service officers; (4) affirmative action; (5) awards and promotions; (6) commissioners' and special assistants' billings; (7) commissioners' and special assistants' financial disclosure reports; (8) commissioners, special assistants, staff director, and office of general counsel travel; (9) Fiscal Year 1985 appropriation earmarks; (10) lobbying issues; (11) state advisory committees; (12) use of commission automobile; (13) contracting to support the commission's mission. (KH)

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EXPECTED AT 9:30 AM
MARCH 25, 1986

STATEMENT OF

WILLIAM J. ANDERSON, DIRECTOR

GENERAL GOVERNMENT DIVISION

BEFORE THE

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

ON

THE OPERATIONS OF

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

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Mr. Chairman and Members of the Subcommittee:

At your request and those of three other Committee and Subcommittee Chairs, we have reviewed certain aspects of the operations of the U.S. Commission on Civil Rights. My statement today presents the results of our review. We have briefed the Commission on our findings, but, as you requested, we did not get their written comments.

Since the Commission was reconstituted in December 1983, it has been the subject of controversy. You received a number of allegations of mismanagement and other improprieties in the Commission's operations and asked us to look into them.

Before discussing our findings, I should point out that we had great difficulty in performing this audit. Some records were missing; some were incomplete; and still others were conflicting. This situation seriously hampered our ability to come to firm conclusions on some of the allegations, using the standards of evidence that we require. We were particularly concerned that documents critical to our ability to determine whether the Commission had followed merit principles in personnel actions were not in the files.

The details of our findings on each allegation are contained in the attachments to this statement.

Trends in Appointing and Paying Consultants, Temporary, and Schedule C Employees

Concern was expressed that consultants, temporary, and Schedule C employees were hired in place of career staff,

leaving career positions vacant. We found that a large proportion of the employees hired since the Commission's reconstitution were in these three noncareer categories and we believe that they were, in fact, hired instead of career staff.

From the beginning of fiscal year 1983 through December 31, 1985, the period covered by our review, the Commission made 212 noncareer appointments vs. 60 career appointments. The total of 212 was composed of 151 temporaries, 41 consultants, and 20 Schedule Cs. The largest number of these (102) were made in fiscal year 1984. As of December 1985, 73 of the noncareer employees hired since the beginning of fiscal year 1983 were still at the Commission. Either they were rehired when their appointments expired, or their original appointments were still in effect. In its fiscal year 1987 budget submission, the Commission reported that 55 of its 236 permanent career positions were unfilled at the end of fiscal year 1985.

We were also asked to determine where the noncareer employees were assigned. Most of the consultants were hired for the Office of Programs and Policy. Most of the temporaries were hired for the Office of the Staff Director, the Office of General Counsel, and the Office of Management. Schedule C hires were primarily for the Commissioners and the Office of the Staff Director.

Practices Used in Hiring Consultants, Temporary, and Schedule C Employees

Because various irregularities had been alleged, we were asked to review the hiring and use of consultants, temporary, and Schedule C employees.

Consultants

The Office of Personnel Management (OPM) defines a consultant as one who gives views or opinions on problems or questions presented by the agency, but who neither performs nor supervises the performance of operating functions. During the period covered by our review, the Commission made 41 consultant appointments.

We examined 31 consultant appointments. These consultants were either still employed by the Commission or their employment was recent enough that their personnel files were still available at the Commission. We attempted to determine whether: (1) the positions were actually consultative in nature; (2) the consultants were qualified for the positions; (3) the Commission had determined that no conflict of interest existed; (4) the 130-day limitation on intermittent services was met; (5) the employment records were accurate and adequate; and (6) the appropriate ethical standards were applied. We did not look at the quality of the services provided by the consultants.

The poor records maintained on consultant appointments precluded us from making firm determinations on their propriety. However, all 31 appointments contained indications of irregularities.

None of the personnel files for the 31 appointments contained the statement of duties and responsibilities that OPM requires be in the files. Thus, we could not determine whether the consultants' services were needed or whether each consultant possessed the necessary background to render advisory services to the Commission. As an example, we noted that one consultant had previously received a temporary one month special needs GS-11 appointment at the Commission. The temporary appointment was extended for another month, the maximum allowable by OPM. The consultant appointment was then made, immediately upon expiration of the extension, at the GS-11 pay rate, in the same office and the same occupation. The full performance level for the occupation is usually GS-12, which raises a question as to what training or experience the person had to provide advice appropriate for consultant services. After the consultant appointment ended, the person was reappointed to a temporary GS-11 position.

At least five of the consultants appeared to be performing operating duties, such as managing a Commission project or supervising career employees. This use of consultants is contrary to OPM instructions.

Finally, 5 of the 31 consultants also had contracts with the Commission during the 3-year period. While not necessarily illegal, two of these served in both capacities during concurrent time periods. Based on the records we reviewed, it is unlikely that they were paid in both capacities during the same time period.

Temporary Employees

Unlike consultant appointments, which are excepted from the competitive service, temporary appointments are subject to the statutes, regulations, and principles governing competitive appointments in the federal service, including observation of the merit principles of open competition, fair evaluation of qualifications, and selection solely on the basis of merit and fitness. Agencies are required to maintain records on all temporary appointments containing the qualification standards used, adequate evidence that the appointee had the necessary training and experience to meet the qualification standards, and facts that establish the correctness of the appointments in other respects.

The Commission made 91 temporary competitive service appointments for 72 individuals between October 1, 1982, and December 31, 1985. We examined 23 appointments for the 15 individuals who were currently employed by the Commission or whose personnel files were still available for review at the Commission. We found problems with all of them.

OPM requires that agencies making appointments outside OPM registers establish an Applicant Supply File (ASF) system which provides for acceptance, rating, and referral of applications on a systematic basis and in accordance with OPM standards and requirements. Although specifics on ASF operations are, to a large extent, left up to agencies, OPM requires that they have "detailed procedures" in an ASF policy.

The Commission does not have detailed ASF procedures. In their absence, numerous violations have occurred, such as insufficient documentation in announcement files on how the applicants were evaluated; job announcements without opening dates; and acceptance of an application from an ultimately successful candidate after the announcement closed. In all of the cases we reviewed, there was insufficient documentation to justify the need for the temporary appointment. In 12 of the appointments, we found appointee qualifications to be questionable, using OPM criteria. However, we did not evaluate the quality of these individuals' performance.

Schedule C Employees

Schedule C positions are excepted from the competitive service because of their confidential and policy-determining nature. The Commission processed 22 Schedule C appointments for 17 individuals employed during the period of our review. We identified two basic deficiencies for all of these appointments -- no qualification standards were used and appointments were not properly documented.

Because the Commission has not established qualification standards for its Schedule C positions, it was not possible to determine the appropriateness of the Commission's actions or the appointees' qualifications. We observed that two GS-7 temporary employees were promoted directly to Schedule C GS-11 and one GS-7 to GS-12; that a consultant was converted to a Schedule C GS-13 and, 17 months later, through successive promotions as

few as 5 months apart, became a Senior Executive Service noncareer level 3, representing a $30,000 increase in salary; and that three Schedule C promotions were made before the new positions were approved by OPM.

Use of Special Needs Hiring Authority

It was alleged that the Commission may have circumvented merit selection procedures by the use of the special needs hiring authority. These temporary appointments, which are not competitive, are supposed to be used only when the legitimate needs of the agency cannot be served by some existing appointment authority. We reviewed the Commission's use of this authority during the period from October 1982 through December 1985 to determine how often it was used and whether the Commission converted any individuals hired under the special needs authority to career appointments.

The Commission made 21 special needs appointments in the period that we reviewed. We examined eight of these appointments for which records were available at the Commission and found no documentation to show the nature of the unusual or emergency circumstances requiring the use of the authority. Seven of these were extended without documentation that the original conditions for the appointment still existed. The Commission used this authority to employ at least one individual while a Schedule C authorization was pending because the employee had reported to work before the Schedule C authorization was approved by OPM.

There was one conversion of a special needs appointment to a career appointment, but this person was appropriately converted based on reinstatement eligibility to a career position.

Referrals From State Employment Service Offices

We were asked to find out whether the Commission had notified the District of Columbia's Department of Employment Services of job vacancies and, if so, how many referred persons were hired by the Commission. Federal agencies are required by statute to notify state employment service offices and OPM of any vacancies for temporary positions in the competitive service that are to be filled outside the OPM register. Agencies are also required to establish detailed procedures for operating their temporary employment programs to meet these requirements.

According to the Commission's Personnel Officer, temporary appointment announcements are sent to the employment service offices in Maryland, Virginia, and the District of Columbia. However, the Commission did not have records showing that this had been done. Moreover, the Commission's administrative instructions do not address notification of these offices or of OPM. The Commission maintains no separate records on how many people were referred by the state offices or, of those, how many were hired. However, the Personnel Officer said he was able to reconstruct from referrals attached to job applications 26 known referrals for 15 vacancies from October 1984 to December 1985. Three applicants were judged to be qualified, but none were selected.

Affirmative Action

Concern was expressed about the extent to which affirmative action was taken by the Commission to hire and promote women and minorities. We requested the Commission's affirmative action hiring goals and accomplishments for fiscal years 1983 through 1985. The accomplishment report for 1985 and the hiring goals for 1986 had not been approved by the Staff Director when we finished our work, so we were only able to review the accomplishments through fiscal year 1984. The Commission does not have affirmative action promotion goals, nor are such goals required.

The Commission sets hiring goals by comparing the profile of its women and minority employees with the profile of the Washington, D.C., metropolitan area civilian labor force. The Commission's goals since fiscal year 1982 have focused primarily on the underrepresented minorities of American Indians/Alaskan Native, Asian Americans/Pacific Islanders, and Hispanics. The goals include career and Schedule C employees, but not temporaries or consultants. The Commission partially met its goals in one job category out of four in each of 1983 and 1984.

Awards and Promotions

We were asked to look at the difference in promotions and awards given to new hires compared to long-time career employees. It was believed that the new hires (those hired after the Commission was reconstituted) were receiving more

favorable treatment. We found that new hires, in general, had not been receiving more favorable treatment, but this pattern could be changing.

Between October 1, 1982, and December 31, 1985, 11 employees received one or more awards less than one year after receiving a previous award, with one employee receiving three awards in less than a year. All of these individuals were career employees who had been hired by the Commission prior to its reconstitution.

The majority of award recipients were career employees who were employed by the Commission before December 1, 1983. However, in fiscal year 1985, new hires received 25 percent of the awards, which represented over 30 percent of the total dollar amount of the awards given. This was generally in proportion to their population. The average award amounts for 1985 and for the first quarter of fiscal year 1986 were greater for new hires than for those hired before the reconstitution of the Commission.

Our review of promotions showed that most of the promotions went to career employees and employees hired before December 1, 1983, until the first quarter of fiscal year 1986. In that quarter, 6 of the 9 promotions went to new hires, 5 of the 9 to noncareer employees.

We were also asked whether any employees received a promotion without serving a year in grade. Career federal employees above GS-5 must serve at least one year in grade

before becoming eligible for promotion. This restriction applies to promotions to competitive positions, and, therefore, does not apply to promotions within the excepted service such as those of Schedule C employees, students, or attorneys. During the period that we examined, 10 Commission employees were promoted without serving one year in grade, but all were exempted. Five of the 10 were Schedule C employees; one was promoted three times in less than 17 months, and another was promoted twice in less than 10 months. The other five, with one promotion each, included an attorney, two students, and two clerical employees below GS-5.

Commissioners' and Special Assistants' Billings and Financial Disclosure Reports

There were several concerns regarding the billings for time spent on Commission business. Of primary concern was the almost full time level of billings by the Chairman and his Special Assistant, for what were thought to be part-time positions. We found, however, that the Commission does not limit the number of days the Commissioners or their Special Assistants can work each year.

The Commission paid the Chairman for 233 days in fiscal year 1983, the same in fiscal year 1984, and 240 days in fiscal year 1985, amounting to about $188,000 over the 3-year period. The other Commissioners billed less than half as much time to the Commission. The Chairman's Special Assistant was paid for

221 days, 179 days, and 239 days for the same fiscal years, amounting to about $100,000. The other Special Assistants (with one exception in one year) billed less time to the Commission.

A related item of interest was whether the Commissioners and Special Assistants derived substantially all of their income from the Commission. We reviewed the latest financial disclosure statements filed by five Commissioners and two Special Assistants. Not all of the Commissioners and Special Assistants were required to file such statements because they had not billed more than 60 days in a calendar year.

We found that none of the Commissioners who filed statements relied on their Commission salary as their sole source of income. In fact, in no case was their Commission salary greater than 50 percent of their total reported income. Even when earned income alone was considered, the relationship of the Commission salary to total earned income ranged from minimal to 69 percent.

One Special Assistant's Commission salary represented over 75 percent of total reported income while the other Special Assistant's salary represented less than 60 percent of total reported income. When only earned income was considered, the relationship of the Commission salary to total earned income was 82 and 100 percent, respectively, for the two Special Assistants.

We did not attempt to determine the completeness or accuracy of the financial disclosure reports, but only used them

as indicators of non-Commission income. However, a Small Business Administration investigation of the Chairman's and his Special Assistant's business dealings raises questions about the accuracy of their reporting of outside income. The Small Business Administration was still reviewing this matter when we completed our work.

We were also asked to look at the role of Special Assistants in general and the tasks they billed for. We found that the nature of the billings was consistent with their job descriptions. However, there were conflicts in Commission records between the support for salary payments and the amounts paid.

Travel

We were asked to compare travel costs before and after the "new" Commission came into being, as well as to determine the extent of first class and overseas travel and the extent of travel by the Commission's Office of General Counsel. Travel costs have increased, but the total number of trips has been about the same. We found a problem with certain other sources paying for portions of travel of some Commissioners and Commission staff, constituting a possible unauthorized augmentation of appropriations.

Each Commissioner has a blanket travel authorization allowing travel within the continental limits of the United States for a full fiscal year. Although Commissioners can approve their own trips, they must abide by General Services

Administration travel guidelines. One Commissioner travels first class routinely, and this has been justified by a letter from his physician. According to vouchers they submitted, travel by Commissioners and Special Assistants was to attend or participate in such activities as Commission meetings, hearings, or conferences and to make speeches.

The total number of trips by Commissioners remained relatively constant over the last four fiscal years. In fiscal year 1982, they took 88 trips costing about $40,000, whereas in fiscal year 1985, they took 93 trips costing about $67,000. The Chairman made the most trips, ranging from 20 in fiscal year 1982 to 36 in fiscal year 1985. His Special Assistant made 4 trips in fiscal year 1982 and 21 in fiscal year 1985.

According to Commission records, the former Staff Director traveled to Israel at the invitation of its government to discuss affirmative action and civil rights issues with Israeli officials. This was the only overseas travel paid for by the Commission.

We have been advised by General Services Administration officials, who review and approve the travel vouchers, that Commission personnel have generally been in compliance with travel regulations; only small amounts have been disallowed on individual vouchers over the years.

Travel by the Commission's Office of General Counsel staff diminished substantially since fiscal year 1982, when 45 trips were made. Only six trips were made in fiscal year 1985--three

for mission-related projects and three to make speeches and to participate in conferences.

The Chairman's travel vouchers showed that other sources paid for his travel and/or lodging in 45 instances in the 117 trips he took over four years. In most instances, he did not identify these other sources on his vouchers. To a lesser extent, vouchers for other Commissioners and Commission employees showed travel expenses paid by outside sources, also often unidentified.

Donations from private sources for official travel constitute an unauthorized augmentation of appropriations, unless the employing agency has statutory authority to accept gifts or if the donor qualifies as a non-profit, tax exempt organization under Section 501(c)(3) of the Internal Revenue Code. Such donations can also constitute a violation of 18 U.S.C. §209, which deals with supplementation of salary, but the Civil Rights Commissioners are exempt from the operation of that provision.

We found that the Commission has no statutory authority to accept gifts. Therefore, unless the contributors qualified as 501(c)(3) organizations, and other requirements were met, the Commission travelers had no authority to accept such payments. The Commission has no procedures to insure compliance with the law even though the Office of Government Ethics and the Office of Personnel Management have suggested certain steps that agencies should take to preclude improper augmentation of their

appropriations. We also learned that the General Services Administration did not check for unauthorized augmentation of appropriations when reviewing travel vouchers of Commission employees. However, the Commission is responsible for ensuring that such unauthorized augmentations do not occur.

We asked the Commission to identify the payment sources in all instances where they were not shown on the travel vouchers. Our review of this information shows that some of the outside sources should not have paid these expenses.

Appropriation Earmarks

We were asked to look at the allocation of Commission overhead and to determine whether the Commission had inappropriately adjusted its overhead allocations to stay within the budget activity earmarks imposed by its fiscal year 1985 appropriation act. Because of the way that the earmarks were established, the discretion that the Commission has in allocating costs, and the poor condition of the Commission's budget records, we cannot say that the Commission did not comply with the 1985 earmarks.

In general, Commission overhead is allocated in direct relation to the salary costs in each budget activity. This is an appropriate technique. However, the lack of documentation of the Commission's budget-setting process precluded a firm determination about which costs should remain in an earmarked budget activity and which should be allocated as overhead to all seven earmarked budget activities. As a case in point, we were

unable to conclude whether the Commission should have included printing costs in overhead, as it did in 1985, or whether printing costs should have been a direct charge to the Publications Preparation and Dissemination budget activity. There are some indications that the Commission prepared the budget with printing as a direct charge. If the Commission had charged its printing costs to the Publications budget activity, the appropriation earmark for that activity would have been exceeded.

The Commission requested and received permission from the Congress to shift $421,000 from three budget activities to the Hearings budget activity so that a third hearing could be held during fiscal year 1985. This hearing was actually held in November 1985 -- the second month of fiscal year 1986. After our repeated requests for documentation on how this $421,000 was used in fiscal year 1985, the Commission responded that it had turned $112,000 back to Treasury and that $83,000 had been incurred in direct salary charges and benefits for the November 1985 hearing during fiscal year 1985. According to the Commission staff, the remaining $226,000 was used to cover overhead costs of $51,000 and other unidentifiable costs in the hearings budget activity.

The $83,000 salary figure is questionable. We have documentation showing that before responding to our requests for an explanation of how the money was spent, the Commission's General Counsel changed his own time charges, as well as the

time charges of the staff that he said worked on planning the November hearing. These changes show much greater fiscal year 1985 charges to the hearing than the staff originally submitted. Most of the increases, however, were to the time charges of the General Counsel and his Deputy. We questioned four other staff members who are still at the Commission; only one agreed that the changes to his time charges were correct.

Lobbying

We were asked to review letters that the Chairman of the Commission sent to four Members of Congress. In these letters, he expressed his opposition to a bill amendment that he stated would require the imposition of racial, sexual, and ethnic quotas in the hiring of Foreign Service officers. The letters stated that the amendment violated the policy of the Civil Rights Commission. We were asked whether the Chairman's actions violated any federal anti-lobbying restrictions and whether the Commission had, in fact, taken the position cited by the Chairman in the letters.

There are two types of restrictions on lobbying by government officials to support or oppose pending legislation -- restrictions in appropriations acts and criminal provisions. Based on our review of the restrictions, we found no conflict with the Chairman's writing of these letters. The letters reflected an official position of the Civil Rights Commission on the imposition of racial quotas. The Chairman's statements on quotas were consistent with a policy statement adopted by the Commission in January 1984 by a 6-2 vote.

There is a question, however, as to whether the bill amendment was referring to goals or quotas. The Chairman considers goals and quotas to be more alike than different. The Commission's January 1984 policy statement opposing quotas alludes to Commission opposition to all forms of racially preferential treatment, but does not specifically mention goals. To our knowledge, the Commission has not taken an official position on goals. We concluded, however, that the anti-lobbying statutes would not prohibit the Chairman of the Commission, as its spokesman, from expressing views on matters where the agency has not previously taken an official position.

On the other hand, when we obtained copies of speeches given by the Commissioners, we found that the Chairman made the following statement, in part, in a prepared speech that he had delivered at least ten times to audiences in various parts of the country from March to July 1985: "I feel compelled at this point to appeal to each of you to attempt to defeat the Civil Rights Restoration Act of 1985." Even though his statement reflected the official view of the Commission, there is some cause for concern. While the Chairman stopped short of explicitly asking members of the public to contact their elected representatives, the context of the speech makes it clear that the listener is being urged to do so. This statement appears to represent the type of remarks the restrictions on lobbying by government officials attempt to limit.

State Advisory Committees

There were several allegations with respect to the state advisory committees. These involved the number of members on the committees; the extensive participation by headquarters in nominating members and chairs, who now are mostly white males; screening and delaying the issuance of committee reports; and changes in the relationship between committee chairs and Commission regional office staff.

It is clear that the state advisory committees have undergone significant changes since being rechartered.

Prior to 1985, the size of the committees varied, ranging from 11 to 33 members in each state. However, Commission regulations only require 11 members for each state committee. When the committees were rechartered in 1985, each committee was limited to 11 members at the recommendation of the former Staff Director. She maintained that there was no apparent justification to tie the size of a committee to population and that larger committees were too costly. She also said smaller committees would have better attendance and greater involvement of members.

During the 1985 rechartering process, regional directors submitted 561 recommended committee members to headquarters. Some existing committee members were nominated, as well as new individuals. However, the former Staff Director and the former Assistant Staff Director for Programs and Policy recommended 280 other individuals as substitutes for 280 of the regional

nominees. These two officials also nominated different chairs for 47 of the 50 committees. The revised nominations were then resubmitted by the regional offices. The Commissioners approved the revised nominations as submitted.

The rechartered committees are now about 59 percent white vs. 49 percent previously and almost 65 percent male vs. about 54 percent in the previous charter. Committee chairs are now 72 percent white vs. 29 percent previously, and 92 percent of the chairs are male compared to 61 percent previously. The chairs set the agendas for committee meetings, attend conferences, and have a network among themselves and Commission officials in headquarters.

The relationship between the committees and the regional offices has changed. Committees are obtaining less input from the regions, and some regional officials told us that because of controls imposed by headquarters they cannot express their views to the committees as they did in the past. Before the 1985 rechartering, the regional staff exercised more influence over the committees in project identification.

Until fiscal year 1985, the committees' primary method of advising the Commission was reports. In that year, they began using briefing memoranda as an alternative to formal reports, and 24 such memoranda were issued to the Commissioners. The briefing memoranda concept was established by the former Staff Director as an alternative to formal committee reports. They are not published and are submitted to the Commissioners for informational purposes only.

The number of committee reports released by the Commission has declined substantially since fiscal year 1983, going from 36 in that year to 3 and 2, respectively, in fiscal years 1984 and 1985. Moreover, the two reports released in fiscal year 1985 were not released as Commission documents. Thus far in fiscal year 1986, the Commission has approved eight reports for release. All of these reports resulted from studies initiated by the committees before the 1985 rechartering. Projects-in-process have also declined from 40 in fiscal year 1983 to 14 in fiscal year 1985. Currently, there are six projects in process. Although the Commission considers the committees to be its "eyes and ears," the number of factfinding meetings went from 12 in 1983 to none in 1985. This meeting category was not listed in the Commission's fiscal year 1987 budget submission.

Use of Commission Automobile

It was alleged that the former Staff Director used a Commission chauffer and car to provide her with transportation between home and work.

During a 3-month period in 1985, an automobile was kept at Commission headquarters instead of at the Commission warehouse in Alexandria, Virginia, where it is normally kept. During approximately the same period of time, the Commission hired an employee whose duties included driving the car. He also had other clerical and administrative duties. The driver said he maintained a log, as required, on the use of the car while he drove it, but threw it away after he left the Commission, a week

after the Staff Director left. Commission instructions require that such logs be turned in to the Office of Management.

The former driver told us he did not transport any Commission employee between home and work. We were also given statements by the former driver and the former Staff Director that the automobile was used for official purposes while it was stationed at Commission headquarters.

Contracting to Support the Commission's Mission

We were asked to determine the extent of the work contracted by the Commission and whether such contracts were subject to competitive bidding.

During fiscal years 1984 and 1985, the Commission obligated over $930,000 on 622 mission-related contracts. While the number of contracts was about equal in the two years, the 1984 obligations were much greater ($722,000.) The largest obligations were for the Office of Programs and Policy with over $506,000 in 1984 and almost $83,000 in 1985.

Competitive bidding is generally required for all contracts over $25,000, and there were only two contracts this large, both awarded in fiscal year 1984. The smaller contract ($53,000) was awarded noncompetitively to the National Committee Against Discrimination in Housing to prepare a nationwide directory of private fair housing agencies. Federal regulations allow such noncompetitive awards when certain conditions are met, but the contract file did not document the existence of those conditions. The Commission's Solicitor, who is also the

contracting officer, told us these conditions were met. The other contract, initially competitively awarded at $444,000, was with the System Development Corporation to prepare a report on the effectiveness of various school desegregation plans. This contract has been novated to the Unicon Research Corporation, and the Commission has been conducting an evaluation to determine whether it can be satisfactorily completed.

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This concludes my prepared remarks. I will now be pleased to answer any questions that you may have.

Attachments to Statement

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ATTACHMENT I

EMPLOYMENT TRENDS IN THE U. S. COMMISSION ON CIVIL RIGHTS

Concern was expressed that consultant, temporary, and Schedule C employees were being hired in place of career staff, leaving career positions vacant.

We were requested to (1) examine the staffing levels for headquarters and regional offices, (2) determine the career vacancies in such offices, (3) determine the numbers hired and salary costs associated with consultant, temporary, and Schedule C employees, and (4) determine whether consultant, temporary, and Schedule C employees were being used as substitutes for filling career vacancies.

The Commission hires employees under various types of appointment authorities, that is, career, temporary, Schedule C, and consultant. In general, these appointment authorities are as follows:

Career -- a permanent appointment in the competitive service for which the appointee has met the service requirements for career tenure and has competitive status.

Temporary -- a nonstatus appointment in the competitive service for a specified period not to exceed one year. Extensions of up to three years are possible.

Schedule C -- an appointment in the excepted (noncompetitive) service of a policy-determining or confidential nature.

Consultant -- a temporary or intermittent appointment in the excepted service of an advisory, rather than operational nature.

Table I.1 shows the staffing levels indicated by Commission records for employees in headquarters and the 10 regional offices as of October 1983, October 1984, and September 1985. (The Commission did not have available staffing level information for October 1985 when we completed our work.) The Commission could provide data on temporary employees for 1984 and 1985 only. We estimated the number of temporary employees for 1983 from information available in Commission personnel records.

ATTACHMENT I

Table I.1
Number of Staff by Type and Location in 1983, 1984, and 1985

Employee type	Number of staff as of: October 1983	October 1984	September 1985
Headquarters			
Career	146	139	125
Temporary	13	17	22
Consultant	9	19	25
Schedule C	3	11	9
Other[a]	7	12	11
Subtotal	178	198	192
Regions			
Career	67	62	58
Temporary	3	4	5
Consultant	0	0	0
Schedule C	0	0	0
Other	0	0	0
Subtotal	70	66	63
Total	248	264	255

[a]Includes Commissioners, the Staff Director, employees retained under an Intergovernmental Personnel Act Agreement, and noncareer Senior Executive Service members. In December 1983, the number of Commissioners increased from six to eight with the passage of the U.S. Commission on Civil Rights Act of 1983.

As table I.1 shows, the number of consultants and Schedule C employees reached their highest levels in 1984. In fact, the number of consultants more than doubled while the number of Schedule C employees increased nearly four-fold from 1983 to 1984. During this time, the number of temporary employees increased by about one-third. The number of Schedule C employees dropped about 18 percent from 1984 to 1985. However, both the number of consultants and temporary employees each increased by about 30 percent in 1985. From 1983 to 1985, the total of all three types of noncareer staff more than doubled.

On the other hand, the number of career staff decreased over the same period. By 1985, the number of headquarters career staff had declined by 14 percent from the 1983 level, and career staff in the regions had declined by 13 percent.

Tables I.2, I.3, and I.4 show the various Commission units to which the employees were assigned during 1983, 1984, and 1985.

Table 1.2
Staffing by Commission Unit
October 1983

Headquarters' offices	Career	Temporary	Consultant	Schedule C	Other	Total filled positions	Vacancies	Total authorized positions
Commissioners	0	0	0	0	6	6	0	6
Staff Director	1	2	2	3	1	9	4	13
General Counsel	19	3	0	0	0	22	7	29
Program Policy Review	34	1	4	0	0	39	2	41
Equal Employment Opportunity	2	0	0	0	0	2	0	2
Solicitor	3	0	0	0	0	3	0	3
Programs and Policy Evaluation	5	1	0	0	0	6	1	7
Management	42	5	1	0	0	48	5	53
Regional Programs	5	0	1	0	0	6	2	8
Congressional and Public Affairs	18	1	1	0	0	20	3	23
Federal Civil Rights Enforcement	17	0	0	0	0	17	3	20
Subtotal	146	13	9	3	7	178	27	205
Regions	67	3	0	0	0	70	10	80
Total	213	16	9	3	7	248	37	285

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Table 1.3
Staffing by Commission Unit
October 1984

Headquarters' offices	Career	Temporary	Consultant	Schedule C	Other	Total filled positions	Vacancies	Total authorized positions
Commissioners	0	3	0	4	8	15	0	15
Staff Director	6	1	0	3	2	12	0	12
General Counsel	21	1	0	0	1	23	3	26
Programs and Policy[a]	3	3	19	2	1	28	0	28
Equal Employment Opportunity	2	1	0	0	0	3	0	3
Solicitor	3	0	0	0	0	3	0	3
Research[a]	28	0	0	0	0	28	5	33
Planning and Coordination[b]	4	0	0	0	0	4	0	4
Management	38	6	0	0	0	44	6	50
Regional Programs	5	1	0	0	0	6	1	7
Congressional and Public Affairs	17	0	0	2	0	19	0	19
Federal Civil Rights Enforcement	12	1	0	0	0	13	7	20
Subtotal	139	17	19	11	12	198	22	220
Regions	62	4	0	0	0	66	10	76
Total	201	21	19	11	12	264	32	296

[a]In July 1984, the Commission divided the Office of Programs and Policy Review into the Office of Research and the Office of Programs and Policy.

[b]The Office of Programs and Policy Evaluation was abolished and a new Planning and Coordination Unit was established in July 1984.

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Table I.4
Staffing by Commission Unit
September 1985

Headquarters' offices	Career	Temporary	Consultant	Schedule C	Other	Total[a]
Commissioners	0	0	0	4	8	12
Staff Director	5	4	0	2	0	11
General Counsel	21	1	0	1	1	24
Office of Programs and Policy	5	7	25	2	2	41
Equal Employment Opportunity	2	0	0	0	0	2
Solicitor	3	0	0	0	0	3
Planning and Coordination	3	0	0	0	0	3
Management	36	8	0	0	0	44
Research	16	0	0	0	0	16
Regional Programs	6	1	0	0	0	7
Congressional and Public Affairs	14	0	0	0	0	14
Federal Civil Rights Evaluation	14	1	0	0	0	15
Subtotal	125	22	25	9	11	192
Regions	58	5	0	0	0	63
Total	183	27	25	9	11	255

[a]Unlike 1983 and 1984, the Commission said it did not maintain vacancy data in 1985. However, the Commission's fiscal year 1987 budget submission showed 55 of its 236 permanent career positions unfilled at the end of fiscal year 1985.

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SALARIES OF CONSULTANTS, TEMPORARY, AND SCHEDULE C EMPLOYEES

Table I.5 shows the total salaries from Commission records that were paid to consultants, temporary, and Schedule C employees during fiscal years 1983 to 1985. It also shows the amounts paid to all other Commission staff during the same time period.

Table I.5
Salaries by Type of Staff
Fiscal Years 1983-1985

Type of appointment	Fiscal years 1983	1984 (thousands)	1985
Temporary and part-time[a]	$ 201.7	$ 312.0	$ 452.0
Consultant	29.3	78.4	30.0
Schedule C	49.6	164.7	303.2[b]
Subtotal	280.6	555.1	785.2
Other employees[c]	7,432.6	7,066.9	7,322.8
Total compensation	$7,713.2	$7,622.0	$8,108.0

[a]The Commission could not separate the salaries of temporary and part-time employees. However, a Commission official estimated that 90-95 percent of the part-time employees are also temporary employees.

[b]While the numbers of Schedule Cs were similar for specific points in time in 1984 and 1985, as shown in tables I.3 and I.4, the salaries almost doubled in fiscal year 1985 due to a combination of their being employed for a greater portion of the year, promotions, and a greater number employed during the year.

[c]Also includes other compensation such as awards for all employees. Any awards given to consultants, temporary, and Schedule C employees are included in these amounts.

As a proportion of total compensation costs, salaries for consultants, temporary, and Schedule C employees increased during the 3 years--from 3.6 percent in 1983 to 9.7 percent in 1985.

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CONSULTANTS, TEMPORARY, AND SCHEDULE C EMPLOYEES HIRED IN 1983, 1984, and 1985

The Commission did not have summary data on the number of consultants, temporary, and Schedule C employees hired for each year. However, we were able to identify the hiring information by using various personnel records. Table I.6 shows how many consultants, temporary, and Schedule C employees the Commission hired in fiscal years 1983, 1984, and 1985.

Table I.6
Consultants, Temporary, and Schedule C Employees Hired in Fiscal Years 1983-1985

	Fiscal years			
Types of appointments	1983	1984	1985	Total
Temporary	27	63	51	141
Consultant	5	29	7	41
Schedule C	1	10	4	15
Total	33	102	62	197

In addition, during the first 3 months of fiscal year 1986, the Commission hired 10 temporary and 5 Schedule C employees, bringing the total number of noncareer employees hired since fiscal year 1983 to 212. (During this same period, the Commission hired 60 career employees: 10 in 1983, 33 in 1984, 12 in 1985, and 5 in the first 3 months of 1986.)

Table I.7 shows that 117 of the 212 appointments were either renewed under the same or a different appointment authority after the original appointment expired, or the original appointments were still in effect as of December 31, 1985. These 117 appointments covered 93 employees, that is, some of the employees received more than one appointment. Of the 93 employees, 73 were still employed by the Commission on December 31, 1985.

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Table I.7
Status of Consultants, Temporary, and Schedule C Employees Hired Since Fiscal Year 1983

Type of appointment	Originial appointment expired, employee not rehired	Original appointment expired, employee rehired	Original appointment still in effect
Temporary	77	54	20
Consultant	13	7	21
Schedule C	5	4	11
Total	95	65[a]	52

[a]These 65 appointments account for 41 employees of whom 21 were still employed at the Commission on December 31, 1985.

We examined the types of new appointments given in the 65 reappointments. As shown in table I.8, most of the rehired temporary employees were given new temporary appointments, and the Schedule Cs were rehired either as Schedule C or appointed to Senior Executive Service noncareer positions. The consultants were rehired in a variety of new appointments; none were given new consultant appointments.

Table I.8
New Appointments For Rehired Consultants, Temporary, and Schedule C Employees

	Original appointments			
New appointments	Temporary	Consultant	Schedule C	Total
Temporary	40	2	0	42
Consultant	1	0	0	1
Schedule C	8	2	2	12
Career	5[a]	1	0	6
SES noncareer	0	1	2	3
Other[b]	0	1	0	1
Total	54	7	4	65

[a]Three were conversions based on reinstatement eligibility, one was converted after selection from an Office of Personnel Management (OPM) register, and another was converted under OPM authorization for direct hire.

[b]Retained under an Intergovernmental Personnel Act agreement with a non-profit organization.

ATTACHMENT I

ABOLISHMENT OF REGIONAL ATTORNEY POSITIONS

During fiscal year 1985, the Commission decided to abolish its 10 regional attorney positions (one in each regional office) and assign their functions to the headquarters' Office of General Counsel. A Commission official explained that the legal workload was too low to justify an attorney in each region. Before this decision was made, three of the 10 attorneys left the Commission. The Commission considered assigning one attorney to represent two regional offices, but decided against it. It began abolishing these positions, using reduction in force procedures for the remaining regional attorneys in the first month of fiscal year 1986. A Commission official estimated that it spent $30,000 for the reduction, but will save $130,000 during fiscal year 1986. Regional offices now must obtain legal assistance from headquarters.

We interviewed 12 officials in 4 of the 10 regional offices. Almost all of the 12 officials (regional directors and professional staff) had worked for the Commission over 5 years while over half had been with the Commission over 10 years. When asked what regional attorneys did, all identified duties such as legal research/advice, and legal reviews of documents/evidence. A few mentioned that attorneys also helped by tracking states' laws within the region and assisted with other staff work when the legal workload was low.

We asked the regional officials for their opinions on how the loss of the attorney positions would affect regional operations. Half of them viewed the impacts as negligible or balanced. Two were not sure what impacts would emerge, and four cited negative impacts--especially delays in getting legal assistance from the Office of General Counsel. Two of the four also expressed concern that headquarters' control of legal assistance may adversely influence the regions' work.

ATTACHMENT II

USE OF CONSULTANTS, TEMPORARY, AND SCHEDULE C EMPLOYEES

Concerns were expressed that consultants were hired to perform work that should have been done by career employees and were performing duties for which they were not hired. Consultants were alleged to have held contracts with the Commission at the same time and compensation for both was overlapping. The Commission was also alleged to have circumvented merit selection procedures that require job advertising and competition among qualified applicants.

We were requested to examine the use of consultants, temporary, and Schedule C employees at the Commission to determine whether (1) appropriate hiring guidelines were followed for those employees, (2) consultants' duties overlapped with those of career staff, and (3) consultants held separate contracts with the Commission.

CONSULTANTS

The Office of Personnel Management (OPM) defines consultant and consultant position in its Federal Personnel Manual as follows:

> "Consultant means a person who serves primarily as an adviser to an officer or instrumentality of the Government, as distinguished from an officer or employee who carries out the agency's duties and responsibilites. A consultant provides views or opinions on problems or questions presented by the agency, but neither performs nor supervises performance of operating functions (23 Comp. Gen. 497). Generally, a consultant has a high degree of broad administrative, professional, or technical knowledge or experience which should make the advice distinctively valuable to the agency."
>
> "A consultant position is one which primarily requires performance of advisory or consultant services, rather than performance of operating functions."

The statutory authority to hire consultants is found in 5 U.S.C. §3109, which permits the head of an agency to hire consultants when authorized by an appropriation or other statute. The Commission is granted this authority by its own statute, found in 42 U.S.C. §1975d. Agencies may require consultant services either by contracting with organizations or individuals or by hiring individuals as employees. Various federal laws and regulations apply, depending on the method used.

ATTACHMENT II

When consultants are hired as employees, their positions are excepted from the competitive service. Consultant services obtained in this manner create an employer/employee relationship and are covered by OPM's rules applicable to salary, travel expenses, conflict of interest, financial disclosure, divestiture, ethics, and work product. An independent contractor does not have the status of a government employee and is generally subject only to any constraints on the conduct of his/her affairs imposed by the contract. The Commission in its Administrative Instructions, has adopted these and other "Federal Personnel Regulations" for its use.

According to 5 U.S.C. § 3109, agencies may employ consultants on a temporary or intermittent basis. Temporary employment is defined as continuous employment for 1 year or less. Intermittent employment is occasional or irregular employment on programs, projects, and problems requiring intermittent services as distinguished from continuous employment. The Federal Personnel Manual says consultants are properly used to obtain such benefits as:

--specialized opinions unavailable in the agency or in other agencies;

--outside points of view, to avoid too-limited judgment, on administrative or technical issues;

--advice on developments in industry, university, and foundation research;

--for especially important projects, the opinions of noted experts whose national or international prestige contributes to the undertaking's success;

--the advisory participation of citizens to develop or implement government programs that by their nature or by statute call for citizen participation;

—the skills of specialized persons who are not needed continuously, or who cannot serve regularly or full time.

The Federal Personnel Manual also cautions that: "The improper employment of experts and consultants is not only illegal, it is wasteful and destroys the morale of the career specialists." Examples of consultant employment considered improper are to: "give a particular person temporary or intermittent appointment solely in anticipation of a career-conditional appointment, do a job that can be done as well by regular employees, do a full-time continuous job, avoid competitive employment procedures, or avoid General Schedule pay limits."

ATTACHMENT II

The relevance of the distinction between intermittent and temporary consultant employment concerns the authority to renew the appointment. Accordingly, OPM has prescribed the following:

--Intermittent consultant appointments can be renewed from year to year; temporary consultant appointments cannot.

--A consultant who served under a temporary appointment in one service year may be reappointed the next year to the same position only on an intermittent basis or to a different position on a temporary or intermittent basis.

In the latter case, OPM warns that: "Even when different positions are involved, reappointments resulting in service for more than two years in a row on a regular basis can give the appearance of continuing employment..."

The Commission Improperly Exercised its Employment Authority for Consultants

From October 1982 through December 1985, the Commission employed 41 consultants.

We reviewed the Commission's consultant employment practices by examining the documentation contained in 31 individual consultant's Official Personnel Folders and other files. OPM requires, in addition to specific certification and employment processing procedures that: "Agencies will maintain information and records in such a manner that review at any time by representatives of OPM will disclose whether there has been compliance with the civil service rules and regulations, and OPM's instructions." Therefore, we relied upon the adequacy of the Commission's records to make determinations regarding compliance with the OPM review categories listed below. These 31 consultants were either still employed by the Commission or their employment was recent enough that their personnel files were still available at the Commission. All 31 consultants had intermittent 130-day limited appointments.

We reviewed the 31 appointments to determine whether (1) the positions were consultative in nature, (2) the employees' qualifications for the positions were documented, (3) the Commission had determined that no conflict of interest existed, (4) the 130-day limitation on services for intermittent consultants was met, (5) the employment records were adequate and (6) appropriate ethical standards and employee financial disclosure reporting requirements were applied.

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We found procedural violations of OPM requirements in all 31 appointments.

Because of the deficiencies in the records maintained on these appointments, we could not adequately assess compliance with employment requirements. None of the files contained a statement of the consultants' duties and responsibilities. Therefore, we could not determine from these files whether the duties performed were consultative or advisory in nature. This lack of records also prevented an analysis of (1) whether the consultants possessed the necessary background to render advisory services to the agency; or (2) whether the consultants' services were needed.

None of the files contained the required certification that the consultants' Statement of Employment and Financial Interests had been reviewed and determinations made that no conflicts of interest existed.

In this respect, because all 31 of these consultants were intermittent, 130-day limited appointments, they are regarded as "special government employees" and are subject to many of the laws and regulations on ethics and financial disclosure applicable to regular government employees. Therefore, the Federal Personnel Manual requires agencies to permanently retain in the official personnel folders for such consultants, certifications that financial disclosure statements have been reviewed, and determinations made that no conflict of interest exists; and certifications that, for appointments or extensions, "requirements concerning the position, appointee's qualifications, pay, documentation, and use of the appointing authority have been met."

OPM requires strict adherence to the 130-day limit. Twenty-one of the consultants' appointments were extended when their initial appointments expired. In none of the 21 cases was the required documentation on the personnel action forms showing the number of days worked under the original appointments. Our review of the Commission's time and attendance records, however, did not show that any consultants had worked more than 130 days.

In defining an intermittent appointment as "occasional or irregular employment", the Federal Personnel Manual cautions that:

> "If at any time it is determined that the employee's work is no longer intermittent in nature, the employment must be terminated immediately."

We noted that three consultants worked full-time and another worked substantially full-time for the duration of their intermittent appointments. In addition to the other appointment irregularities discussed below, the nature of the work schedules of consultants A, B, C, and D raise questions regarding the purpose of their appointments and the effectiveness of agency controls. Consultant A worked all 56 regular work days (non-holiday, Monday - Friday) from November 11, 1984, through February 2, 1985. Consultant B worked more than full-time; 67 days from March 18, 1984, through June 9, 1984, out of 59 regular work days. Consultant C also worked in excess of a normal full-time schedule; 59 out of 57 work days from February 23, 1984, through May 12, 1984. Consultant D worked 60 days from February 24, 1984, until expiration of the appointment on May 24, 1984, out of a total of 65 regular work days; substantially full-time. This consultant's appointment was extended on May 25, 1984, without documenting the number of days worked under the original appointment, permitting the consultant to work an additional 60 days out of the next 69 work days until September 2, 1984, when the consultant was given a special needs, temporary appointment. In our opinion, these are not intermittent tours of duty. Further, because consultant D had worked substantially full-time under the original appointment, the appointment should have been terminated, and the extension of this "intermittent" appointment was, therefore, improper.

Because none of the files for these appointments had sufficient documentation of the consultants' duties, it was not possible to adequately evaluate their qualfications for their assignments. In two cases, the Commission's official personnel folders did not contain the consultants' Personal Qualifications Statements or resumes--employment documents essential to determining and certifying qualifications for an appointment.

At least five of the consultants appeared to be performing operating duties. Performance of operating duties is considered by OPM to constitute illegal employment. Our conclusions for these consultants were based on evidence in personnel files or documents relating to their selection for other appointments. Because the Commission was negligent in its preparation of job descriptions and other record keeping responsibilities, it was not possible to make these determinations for the other 26 consultants.

Our findings on the five consultants were as follows.

Consultant A -- Beginning on September 10, 1984, this individual was given a 1-month, temporary "special needs" appointment as an economist, GS-110-11, which was extended for an additional 30 days before being appointed, without a break in

service, to the consultant position on November 8, 1984. The consultant position was at the same pay rate, in the same occupation, and in the same office as her temporary appointment. In our opinion, this was a questionable use of the consultant and temporary appointment authorities to avoid competitive employment procedures. Moreover, the experience in these positions was used to qualify for a subsequent competitive, temporary appointment. This provided the employee a competitive advantage over other applicants.

Further, the employee subsequently described her duties in a job application, dated September 18, 1985, as "program specialist" at the Commission for the period from September 1984 to that date. Not only does this indicate that the duties under both the special needs and consultant appointments were the same and of a continuing nature, but the "program specialist" duties were described as including "overseeing" and "frequent supervision" which also appear to be operational, rather than advisory, inappropriate for a consultant to perform.

Depending on the context in which the actual "program specialist" work was performed, the definition provided for General Schedule positions in the Program Management Series, GS-340, or Civil Rights Analyst Series, GS-160, might apply to this employee's "program specialist" duties. Duties of positions classifiable in the GS-340 Series are to "manage, direct, or to assist in a line capacity in managing or directing one or more programs . . . when the paramount qualification requirement of the position is management and executive knowledge and ability. . ." Therefore, in cases where the Program Management definition would apply; managing, directing, and assisting in a line capacity are operating duties; not appropriate for consultant work.

Similarly, in positions where specialized subject matter knowledge (i.e., voting rights, equal employment, etc.) is required, the GS-160 Series would be applicable. But, again, such duties would represent operating duties necessary to carrying out the Commission's mission. In either case, the duties of a "program specialist" would appear operational in nature, rather than advisory.

The GS-11 grade level equivalent of this consultant's salary is also an indication of questionable qualifications to provide consultant services. OPM's Economist Series GS-110 classification standard, the series assigned to both the special needs and consultant appointments, describes the GS-13 consultant economist work as "the lowest level at which a professional economist in the Federal service is expected to provide technical advice which is relied on in decisions

concerning official government action..." Further, the OPM classification guide which supplements this standard for consultant type work, indicates that "positions at the full performance level presently are rarely found below GS-12. Moreover, positions below GS-11 ... are usually trainees..." Thus, the GS-11 level would be considered, perhaps an advanced trainee position, not yet performing duties at the full performance level. It is doubtful that anything below the full performance level could provide adequate advice at a level appropriate for consultant services.

Consultant B -- This consultant was appointed on March 19, 1984. On a Personal Qualifications Statement, dated May 16, 1984, the consultant described the duties of this appointment as: "Doing the research and writing for a major civil rights study and, in addition, writing occasional discussions on civil rights issues as requested by my supervisor." If the consultant was being used to write the Commission's report on this project, rather than providing advice on the issues for consideration by Commission staff, such work would be of an operational nature. This appears to be the case and was evident in an April 27, 1984, memorandum where a Commission official described the consultant's work as "preparing a background report on the history of Federal civil rights enforcement policy."

After 3 months, this consultant was converted on June 10, 1984, to a career appointment, GS-160-13 Civil Rights Analyst. In our opinion, the consultant's qualifications for this permanent appointment were questionable. It was not clear if the experience gained under the consultant appointment was used as a basis to qualify for this position. There was no documentation in the consultant's official personnel folder that the Commission had evaluated the employee's background and consultant experience against the requirements of OPM's qualification standards. However, our analysis of these requirements indicated that the consultant's Ph.D. in Political Science would be qualifying only for a GS-11. The consultant's application did not show evidence that the consultant had the necessary quantity or quality of specialized experience in one or more identified civil rights areas (e.g., voting rights, discrimination) for the GS-13 level.

Consultant C -- This consultant was appointed on February 23, 1984, and performed "research on the Student Financial Aid and the Higher Education Act of 1965"; duties that appear related to the continuing operations of the Commission and, therefore, improperly performed by a consultant. Yet, the Staff Director signed an Expert/Consultant Certificate for this appointment that stated "I am satisfied that... the work... requires a high level of expertness not available in the regular work force, is of a purely advisory nature, and does not include the performance or supervision of operating functions."

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On May 18, 1984, the employee was made Special Assistant to the Staff Director under a Schedule C appointment; the qualification standards for which were not established by the Commission as required by the Federal Personnel Manual.

Consultant D -- This consultant was appointed on February 24, 1984, to a position described by the Commission in terms which indicate that the employee's duties were of an operational nature. In an April 27, 1984, memorandum, the Special Assistant to the Staff Director reported that the consultant "is laying the groundwork for a study of Affirmative Action as implemented by institutions of higher education." The consultant was given a 4-month extension on May 25, 1984.

In this case the operational nature of the consultant's work was recognized by the Assistant Staff Director for Administration who informed the Deputy Staff Director in an August 24, 1984, memorandum that the consultant was performing "work which should be performed by a Commission employee." The Assistant Staff Director for Administration went on to suggest that the consultant should be "reassigned to bonafide expert work or his appointment should be terminated." Recognizing the seriousness of the matter, the Assistant Staff Director emphasized that "If we do not take corrective action, OPM could terminate our delegation of authority to appoint consultants/experts." The consultant's appointment was terminated on September 2, 1984, when the employee was converted to a "special needs" temporary position as a "special assistant".

The 30-day special needs temporary appointment and its subsequent 30-day extension were questionable in several respects. A special needs appointment requires the existence of unusual or emergency circumstances for its use and continuance of those circumstances for its extension. There was no documentation that such circumstances existed. The appointment was made after the employee had worked substantially full-time for 120 days of the 130-day limit as a consultant, performing duties which the Commission, before the conversion recognized as improper. According to a Commission memorandum, the pay rate set under the temporary appointment was justified under the Commission's Delegation of Authority Agreement from OPM to pay "an advanced in-hiring rate of GM-15 step 5 ($57,227)" based on the employee's "superior qualifications." The memorandum discussing this pay rate and explaining the employee's "superior qualifications" was written after the original appointment had expired and had been extended without this required justification.

ATTACHMENT II

While the memorandum did document a high level of qualifications, it did not properly address the criteria in the Federal Personnel Manual regarding the "existing pay which the candidate would have to forfeit by accepting federal employment". The memorandum referenced an annual salary ($54,000) earned under employment terminated in February 1983 but did not mention the much lower salary received for the 9 months just before the consultant appointment. Both salaries were more than $2,500 below the advanced rate given, which was a direct violation of the conditions set forth in the OPM delegation agreement. According to the agreement, "no advanced rate will be approved which would be in excess of $2,500 above the candidate's current actual earnings."

It is also improper to consider, as did the Commission, for "superior qualifications" purposes, the annual salary rate paid this employee as a consultant (approximately $56,700) in setting the pay for the subsequent temporary appointment. To do so would be to base the pay of a competitive service appointment, subject to General Schedule pay restrictions, on the salary set by administrative authority of the same employer for the excepted service consultant position. General Schedule pay provisions require that appointments be made at the minimum rate of the grade and specifically prohibit setting higher rates of pay on the basis of a rate received for an appointment as a consultant.

Consultant E -- This consultant's file contained a memorandum which described the projected nature of the assignment as advisor to the Assistant Staff Director for Congressional and Public Affairs while acting as Editor of the Commission's publication, Perspectives. If editorial work was performed, it may be considered operational work of the office, not advisory. The consultant was the Commission's former Director of Press and Communications Division and editor of Perspectives.

Interviews With Commission Staff on Consultants' Duties

In an effort to learn more about the consultants' duties, we interviewed eight staff who worked on four Commission projects that used consultants. These interviews focused on the duties that each Commission employee performed compared to the consultants.

Those interviewed had similar duties. All generally had responsibility for researching one or more areas of an issue, including data collection and analysis. They also were responsible for writing a sections(s) on their area(s) for the final project reports.

ATTACHMENT II

Those interviewed pointed to two types of consultants serving on these projects. One type served on what they called an advisory panel or group. This group, of two to seven consultants, was formed to offer advice to the project team. They said the group generally met twice with each project team; one meeting occurred near the project's origin to discuss its design (e.g., methodology, objectives, scope) and the other occurred when the project team began writing the report. They said the group generally listened to presentations from the team and provided verbal comments. Most of those interviewed said that these advisory consultants did little else. For example, they said that they did not know of these advisory consultants providing written products or interacting to any extent with individual team members outside of these meetings.

Those interviewed described the other type of consultant as playing a much more active role, such as acting as the project director. All interviewees who worked with this type of consultant referred to a least one consultant on their project who played an active role. For example,

--All those interviewed for one project referred to a consultant who served as the project director by proposing, designing, and managing the project; supervising team members; and researching and writing report sections. The Commission later converted the consultant to a Schedule C position because this person had been performing the duties of a project director.

--According to two staff interviewed, the consultant's project direction differed significantly from other projects. For example, they said the consultant, rather than career staff, proposed and designed the project. They also said that the consultant, as project director, did not follow Commission procedures and practices by (1) ignoring internal comments, which the two staff characterized as highly critical, on the project's design, and (2) rewriting project team members' draft chapters without discussing revisions with the writers and without support from the research.

--The same people said that a consultant who worked part time for the Commission on this project, performed staff duties. They said that the consultant researched and wrote a chapter of the report.

--All those interviewed who worked on another project said the consultant directed the project.

Consultants Serving as Contractors

We reviewed Commission contract files for fiscal years 1983 through 1985 to determine whether any individuals who were employed by the Commission as consultants were also being paid as contractors. We identified five individuals who served as both a consultant and a contractor during the 3-year period. Two of these served in both capacities during concurrent time periods. However, based on the records we reviewed, it is unlikely that they were paid in both capacities during the same time period.

TEMPORARY EMPLOYEES

Unlike consultant appointments, which are excepted from the competitive service, the temporary appointments we reviewed are subject to the statutes, regulations and principles governing competitive appointments in the federal service. Agencies must observe the merit principles of open competition, fair evaluation of qualifications, and selection solely on the basis of merit and fitness in making temporary appointments.

Agencies have considerable discretion in choosing the method to be used for filling competitive positions. With few exceptions, competitive appointments, whether permanent or temporary, are made from registers of qualified applicants which have been evaluated by OPM and ranked on the basis of their ratings for referral to agencies upon request. Appointments outside these registers are strictly limited by OPM to such conditions as when insufficient eligibles are available for referral from OPM registers or the appointments are made under specific authority delegated to the agency by OPM. These exceptions permit temporary employment outside of OPM registers to be made in the manner prescribed by OPM through the use of agency established registers known as applicant supply files.

Procedures governing selections of temporary appointees from agency registers have been delegated to agencies for appointments for 1 year or less to positions at grades GS-12 and below; and for extensions to those appointments for up to one year each, for a total of up to 4 years[1] provided that:

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[1]Before January 1985, delegated temporary employment authority was limited to positions at GS-7 and below for periods of up to one year and for extensions to those appointments for one additional year.

(1) appropriate state job service and OPM offices are notified of the job openings;

(2) the appointee meets the qualification standard for the position; and

(3) the appointee comes within reach for selection through the agency's applicant supply file.

The competitive, agency register selection requirements do not apply to non-competitive temporary appointments of persons with eligibility for reinstatement (competitive status); and persons with non-competitive appointment eligibility (former Peace Corps, Vista and ACTION Community volunteers).

Agencies are also delegated authority to make non-competitive, 30-day temporary limited appointments to meet "special needs." Special needs appointments are appropriate only when the legitimate needs of the agency "cannot be served through appointment under some existing authority" and include emergency conditions. The Commission's use of special needs appointments is discussed separately, beginning on page 28.

The Commission has Improperly Exercised its Temporary Employment Authority

We examined personnel folders and other Commission records to determine whether the Commission complied with the qualification standards and other appointment and record keeping requirements for temporary employees. OPM requires agencies to maintain records in each appointee's official personnel folder so that a review at any time will show:

--the qualification standards used;

--adequate evidence that the employee had the necessary training and experience to meet the qualification standards at the time the appointment was made; and

--facts which establish the correctness of the appointment in all other respects.

The Commission made 91 temporary competitive service appointments for 72 individuals who were employed between October 1, 1982, and December 31, 1985, under its delegated authority to make appointments outside OPM registers. Because of the nature of temporary employment, most of the individuals were no longer employed by the Commission and, consequently, their records were not at the Commission. We were able to

review 23 appointments for 15 individuals who were currently employed by the Commission and/or whose personnel files were still available.

The Commission did not have an applicant supply file policy specifying its temporary appointment procedures. OPM requires that agencies making appointments outside OPM registers establish agency registers known as the applicant supply file system which provides for acceptance, rating and referral of applications on a systematic basis and in accordance with OPM standards and requirements. Although specifics on the system's operations are, to a large extent, left up to agencies, OPM requires that they have "detailed procedures" in agency policy.

We found that violations of OPM's procedures and possibly Title 5 regulations may have occurred in all 23 temporary appointments we reviewed. These included instances of (1) no evidence that appropriate state employment services and OPM offices were notified of the openings; (2) applications not being date-stamped to show when they were received; (3) insufficient information in vacancy announcements on the qualifications required and application procedures to be followed; (4) insufficient documentation in announcement files of how applicant ratings were derived; (5) announcements without opening dates; (6) an application being accepted after the closing date of the announcement; and (7) failure to publish vacancy announcements.

Because these temporary limited appointments are considered employment in the competitive service, appointees must meet the qualification standards for the positions. For this reason, OPM requires that announcements specify the standard to be used in making the determination of eligibility. In 12 of the 14 appointments requiring competitive qualification analysis, such documentation was lacking and/or, we found appointee qualifications to be questionable. The other 9 temporary appointments did not require qualification analysis; 8 were special needs appointments, exempt from examination processes, and one was based on prior appointment from a competitive register. However, in the latter case (see employee 5) this was not documented.

Also, the appropriateness of the appointments in other respects was not adequately documented. OPM requires that temporary appointments made outside OPM registers must not be made to avoid merit principles, to extend other temporary appointments or to make non-competitive appointments pending completion of examining, referral, or other competitive processes. The Commission did not document the unusual circumstances for any of the 8 special needs appointments, and the other 15 appointments were so procedurally flawed that the appropriateness of all 23 appointments is questionable.

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Examples of Questionable
Temporary Appointments

The following nine examples illustrate the deficiencies we found in our review of temporary appointments.

Employee 1 -- This employee was given a "special needs" appointment as a GS-101-7 Social Science Analyst on October 29, 1984, without documentation of the need for this emergency appointment and was then extended for an additional month. Not only was there no documentation that the initial appointment met the special needs criteria, i.e., agency needs "cannot be served through appointment under some existing authority", but the extension of this 1-month appointment, according to the Federal Personnel Manual, was proper only when "continued employment is essential to agency operations, as in the case of natural disasters or acts of God."

The employee was then selected for a 1-year, outside the register appointment on January 3, 1985, for the same position. The file for this temporary job opportunity announcement did not indicate that appropriate state employment service and OPM offices were contacted, and did not show an opening date for the receipt of applications. Selecting this person immediately following a special needs appointment suggests that the prohibition against the use of special needs appointments "to effect employment of an applicant pending completion of examining, referral, or other competitive processes" may have been violated.

Employee 2 -- This employee's appointment as a GS-301-4 clerk on January 28, 1985, was not processed according to OPM prescribed procedures. The Commission's announcement for a 1-year temporary, outside the register appointment opened on November 28 and closed on December 10, 1984. The announcement file did not contain the employee's job application. Moreover, the application in his official personnel folder was not date-stamped to show when it was received by the Commission nor was there any indication of the position for which it was submitted. The application also did not have an original signature and was dated November 15, 1984--two weeks before the opening date of the announcement. The Federal Personnel Manual requires that all applications be dated to show when they were received and the position sought identified. Agencies are directed to return any applications filed for positions for which the agency is not accepting applications (i.e., before the opening date of an announcement) to the applicant.

This employee's pay was also inappropriately set at GS-4 step 5 under highest previous rate procedures. The employee's official personnel records show a previous appointment at the

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GS-5 level as the basis for the advanced step. However, the GS-5 position was also a temporary position limited to 10 days, an inappropriate basis upon which to justify pay above the minimum (step 1) for the grade. As required by OPM regulations and the Commission's own instructions, the highest previous rate may not be based on a temporary appointment of 90 days or less.

Employee 3 -- Effective September 10, 1984, this employee was appointed as a GS-110-11 Economist under "special needs" authority without documentation of the circumstances requiring this restricted type of employment action. Similarly, the circumstances requiring her 1-month extension on October 10, 1984, were not documented.

Following her special needs appointment and a subsequent consultant position, she was selected for a temporary, outside the register appointment, as a GS-301-11 Program Specialist on February 4, 1985. There was no evidence in the Commission's records to indicate that the announcement for this position was sent to all required sources. Neither did the announcement identify the qualification standard used for the position or summarize its requirements.

A selective placement factor was used by the Commission for this position. Selective placement factors are job-related, qualification requirements not specified in the applicable OPM qualification standard but which candidates must meet for basic eligibility purposes. The announcement stated that "knowledge of policy review and analysis as demonstrated by experience or education is required as a selective factor." The need for a selective placement factor was not apparent since the description of the Program Specialist position did not contain duties indicating policy review and analysis responsibilities.

We are concerned that the use of the selective factor may have been to give the employee a competitive advantage over other prospective candidates because her Personal Qualifications Statement shows a master's degree in public policy analysis. In describing a prohibited personnel practice, 5 U.S.C. §2302(b)(6) states: "Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority...grant any preference or advantage not authorized by law, rule or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment."

We also found the employee's qualifications for a GS-301-11 Program Specialist position to be questionable. She was given credit for 6 months experience doing computer systems analysis

toward meeting the 1-year, directly related, specialized experience as a program specialist required for appointment at the GS-11 level. According to the qualification standard used by the Commission, specialized experience is "experience in a type of work...directly related to the position to be filled... and at the grade for which considered." The employee's computer systems analyst experience does not appear to be directly related to civil rights and equal employment opportunity research duties outlined in the position description. Without the credit of this service, she would have been 4 months short of meeting the minimum specialized experience qualification requirements. Moreover, on October 6, 1985, she received a temporary appointment to Program Specialist GS-301-12, her qualifications for which were based on her GS-11 temporary appointment.

Employee 4 -- This employee did not appear to meet the minimum requirements for her temporary outside the register appointment as a GS-160-11 Civil Rights Analyst. The OPM qualification standard for positions at the GS-11 level requires 1 year of experience at the GS-9 level or equivalent in the civil rights, equal opportunity, or other fields that involve work directly related to the position being filled, in addition to a master's degree in a directly related field.

Although rating forms for 9 other applicants for the position were in the Commission's announcement file, the rating form for the employee selected was missing. Our review of her qualifications as stated in her application and resume, indicated that she had a master's degree but her work experience as a counselor, teaching assistant, and word processor operator did not involve civil rights or equal opportunity work or work in another directly related field. Therefore, we found no basis for the Commission's decision that she was qualified for the position.

Employee 5 -- This employee was first employed under a temporary, outside the register appointment as a GS-301-12 Staff Assistant on April 5, 1982. We found none of the required documentation for this appointment. On March 2, 1982, the Commission had requested the Southwestern Regional Office of OPM to rate and certify the individual as eligible for appointment to the the position. However, the employee was not certified and, according to the Commission's Personnel Officer, no certificate was received. The Commission then used the outside the register appointment to hire the employee. After three extensions of the temporary appointment, which permitted the employee to be retained for more than 18 months, the appointment was terminated, briefly, but he was reappointed to the same position on November 15, 1983. The November 1983 appointment

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used a non-competitive employment authority which is to be used only when the appointee has had a minimum 30 day break in service and has previously served under a temporary appointment after selection from a competitive register. Such an authority was inappropriate in this employee's case. His earlier outside the register appointment did not confer eligibility for movement or reappointment to other jobs, and his break in service was only 16 days.

The Commission did not document the employee's qualifications for either appointment. Further, there was no documentation of required approval from OPM to make this temporary appointment above the GS-7 level delegated. The Commission's Personnel Officer also told us that the employee should have been appointed under Schedule C authority.

Employee 6 -- This employee received an outside the register appointment as a GS-110-7 Economist on March 3, 1985. The position vacancy announcement did not indicate an opening date for receipt of applications. Also, the files contained no indication that the announcement had been forwarded to the state job service and OPM offices.

Of primary concern in this case is the employee's apparent lack of qualifications for the position. The OPM qualification standard for GS-110-7 economist specifies that completion of a 4-year course of study is required for appointment. According to his job application, the employee had not completed a full 4-year course of study.

Employee 7 -- This employee was given a 1-month "special needs" appointment on April 16, 1984, as a GS-160-7 Civil Rights Analyst, and the appointment was extended for another month on May 17, 1984. The files contained no documentation of the need for this restrictive type of appointment. Neither was there any evidence in the files that the conditions continued, necessitating the extension of the appointment.

The employee's appointment was then converted to a summer appointment in the same position, on May 27, 1984, in apparent violation of procedures required for making this special type of temporary appointment. The Federal Personnel Manual specifies that temporary appointments during the summer period (May 12 - September 30) are to be made in accordance with OPM Summer Jobs Announcement and filled using a special agency established summer register. When asked about this appointment, the Commission's Personnel Officer could not provide any evidence to support the appropriateness of this action.

At the end of the summer appointment the employee was converted to a temporary outside the register appointment, not to exceed 1 year as a GS-101-7 Social Science Analyst. No agency register documentation was available to support the legitimacy of this appointment.

Considered together, these appointments appear to violate the prohibition against use of the temporary appointment authority to extend other temporary appointments. Moreover, on May 8, 1985, the employee was converted to a Schedule C appointment as a GS-301-12 Special Assistant, without documenting the qualification requirements for the position or how the employee met those requirements.

Employee 8 -- This employee received an outside the register temporary appointment on April 21, 1985, as a GS-160-13 Civil Rights Analyst. The vacancy announcement for the position did not specify the position qualification requirements. There was no documentation of the rating given the employee in relation to qualifications for the position. There was also no documentation of prior OPM approval for the GS-13 level which was above the maximum GS-12 level delegated for temporary appointments.

The employee's job application was dated March 15, 1985, one week after the announcement closed on March 8, 1985. A handwritten note on the last page of the application indicated it had been received in the personnel office on March 11, 1985. Nevertheless, both dates were after the announcement closing date. Thus, it appears that the application should not have been accepted, and the appointment was improper.

Employee 9 -- This employee was appointed as a GS-1035-9 Writer Editor on June 17, 1985. However, the job application was dated May 9, 1985, 6 days before the position vacancy was announced. The Federal Personnel Manual requires that applications received for positions for which the agency is not accepting applications be returned to the applicant.

Further, the position vacancy announcement required applicants to submit writing samples at the time they applied. We found no writing sample with the employee's job application or in the recruiting file. There also was no documentation of what weight was given a writing sample in the evaluation.

Six individuals were rated eligible for this vacancy, including two veterans. The veterans were entitled to preferential consideration over non-veteran applicants like the employee selected. The Commission's Acting Staff Director interviewed only the two veterans. One was determined to be

"not eligible" because he did not submit a writing sample, and the other veteran withdrew from competition, indicating "he did not think he was interested."

USE OF SPECIAL NEEDS HIRING AUTHORITY

We reviewed the use of the "special needs" temporary employment authority for those employees at the Commission during the period of October 1, 1982, through December 31, 1985, to determine (1) how extensively this authority was used and (2) whether the Commission converted any of these individuals to other appointments.

Under the specific circumstances permitted by OPM, agencies are delegated authority to make non-competitive temporary limited appointments without examination to meet special needs. Special needs appointments are appropriate only when the legitimate needs of the agency "cannot be served through appointment under some existing authority." The needs of the agency are to be considered, as opposed to accommodating the needs of the individual employee, in making these types of appointments. According to the Federal Personnel Manual, special needs appointments;

(1) may not exceed 1 month; may be extended for 1 month if essential to agency operations; and no more than one appointment is permitted for any individual during any 12 consecutive months;

(2) may not be made to effect employment of an applicant pending completion of examining, referral, or other competitive processes; and

(3) like other temporary, outside-the-register appointments, may not be used to exceed the service limitation imposed by some other appointment authority.

The Commission made 21 special needs appointments to 18 individuals employed at the Commission during the period of our review. Eight of these appointments for 7 employees were included in our broader review of the Commission's use of temporary employment authorities (see pages 20 to 28). None of them had documentation establishing the nature of the unusual or emergency circumstances requiring the use of the authority. Seven of the eight special needs appointments that we reviewed were also extended without documentation that the original conditions for the appointment continued to be "essential to agency operations" as required by the Federal Personnel Manual.

Without the documentation to justify the legitimate use of the special needs appointment authority, it appears that the Commission may have used the authority to employ individuals while other employment processes were pending or for other inappropriate purposes. For example, in one case the Staff Director notified the Assistant Staff Director for Administration in an internal memorandum dated March 8, 1984, that an individual had reported to work on March 5, 1984. The Assistant then notified the Staff Director that the employee's Schedule C position required prior OPM approval and suggested the special needs appointment to "cover [the employee] from the period of March 5 until OPM approves the appointment...". The employee was subsequently appointed using the special needs authority until the Schedule C position was authorized by OPM on March 14, 1984. According to the Commission's Personnel Officer, this authority was also used for another Schedule C employee while OPM approval was pending. Circumstances which primarily accommodate the needs of the employee or are not emergencies, such as this, are clearly not appropriate "special needs." On two occasions, the Commission used special needs appointments to cover clerical services while employees were on leave. Such circumstances are not unusual, can be planned for in advance, and can be met using other employment authorities.

USE OF SCHEDULE C EMPLOYMENT AUTHORITY

As discussed previously, Schedule C positions are "excepted" from competitive examining requirements because of their confidential and policy-determining nature. These positions, at GS-15 and below, can be established and filled only with specific authorization from OPM. OPM must not only determine that exception of the position from the competitive service is appropriate, but also must ensure that Schedule C positions already approved continue to be appropriate. Each Schedule C authority applies only to the specific position for which it was approved. Therefore, when a Schedule C position becomes vacant, the agency must request OPM approval to reestablish the position before it can be filled.

When an agency changes the duties or grade of a Schedule C position, its organizational location, or its reporting relationships, the appointing official may not assume that the newly described position is covered by the earlier Schedule C authority. Schedule C employees must also meet the security, suitability, and conduct requirements prescribed by law for all government employees.

Among other requirements, OPM specifies that agency requests for Schedule C position authorizations must include OPM Form 1019. This form is to be used by OPM and the agency to

document official approval of the exception. Because it is the form authorizing the appointment, the Federal Personnel Manual requires that agencies retain the Form 1019 as a permanent record in the employee's official personnel folder. The appointment action should also specify the OPM assigned position number provided on the Form 1019.

Schedule C Appointments at the Commission

A total of 17 individuals serving under Schedule C appointments were employed at the Commission between October 1, 1982, and December 31, 1985. These appointments and others held by these employees are shown in table II.1. We identified two basic deficiencies for the 22 appointments processed for these employees; qualification standards were not used and the appointments were not properly documented.

The Commission has not established qualification standards for its Schedule C appointments. This is a violation of the Federal Personnel Manual requirement that agencies establish qualification standards before appointing employees to excepted service positions. According to an OPM representative we talked to, Schedule C positions are not excluded from this requirement. Qualification standards are necessary to establish selection criteria for these appointments in a manner which is in keeping with the government's policy of equal employment opportunity and the specific limitations on the Schedule C appointment authority imposed by OPM. Because the Commission did not establish such standards, we were unable to assess the appropriateness of the Commission's actions or the appointees' qualifications for the positions.

Promotions for Schedule C employees are not subject to the time-in-grade restrictions applicable to positions in the General Schedule. However, OPM reminds agencies that the purpose of the restrictions is to prevent excessively rapid promotions and that agencies should assure that their promotion programs do not permit excessively rapid promotions for positions not subject to the General Schedule.

As indicated in table II.1, the variety of appointments and other personnel actions used by the Commission to promote and move employees between Schedule C and other positions, indicates a general lack of employment controls and possible misuse of employment authority. Employees 10C and 14C stand out in this regard.

Employee 10C, appointed as a consultant (see discussion of consultant C on page 16) on February 23, 1984, at a salary approximately equivalent to GS-13, was converted 3 months later

to a Schedule C appointment on May 18, 1984, as a GS-301-13 ($36,152) Special Assistant to the Staff Director. Then, at 5 month intervals, this employee was promoted to GM-14 and GM-15 Schedule C positions, and finally, 7 months later promoted to a noncareer Senior Executive Service ES-3 position ($66,232). This rapid rise represented a $30,080 (83 percent) increase in salary in only 17 months.

Employee 14C was converted to a Schedule C appointment as a GS-301-12 ($31,619) on May 8, 1985, after a series of questionable GS-160-7 ($17,221) temporary appointments (see discussion of temporary employee 7 on page 26). This employee's Schedule C conversion resulted in an 84 percent pay increase over the GS-7 salary held under the temporary appointments for just over a year.

The Commission also did not properly document its employment actions on Schedule C appointments. None of the personnel action documents cited the OPM assigned position numbers, and personnel action documents for three promotions and two appointments did not cite the authority for the actions, the approved OPM Form 1019 and OPM approval date or the exception to OPM approval. The three promotions--employee 6C to GS-14, employee 10C to GM-15, and employee 12C to GS-13--were effective March 3, 1985, but OPM did not approve upgrades for these positions until March 20, 1985. An OPM representative confirmed to us that, of the two appointment actions in question, the December 20, 1985, appointment of employee 16C was properly authorized by OPM but could not confirm that OPM had approved the October 1, 1985, appointment for employee 2C. The OPM representative also stated that agencies should use the OPM assigned position numbers. This number provides essential position/incumbent controls. Because the Commission did not cite the OPM assigned position numbers on the personnel action documents, it was not possible to determine which specific OPM Form 1019 authorized any of these actions. It also prevented verification that the employees were performing the duties approved by OPM.

ATTACHMENT II

Table II.1
Schedule C Employee
Appointment Chronology

Employee	Date	Type of Action	Job Title	Grade
1C	06-01-82	30-Day Special Needs Appointment	Special Assistant to Chairman	13
	07-02-82	30-Day Extension-Special Needs	Special Assistant to Chairman	13
	07-25-82	Schedule C Appointment	Special Assistant to Chairman	13
	10-30-83	Promotion-Schedule C	Special Assistant to Chairman	14
	02-04-84	Termination		
	03-05-84	30-Day Special Needs Appointment	Special Assistant to Chairman	14
	03-14-84	Schedule C Appointment	Special Assistant to Chairman	14
	10-09-85	Promotion-Schedule C	Special Assistant to Chairman	15
2C	07-27-80	Schedule C Appointment	Confidential Assistant to Member	12
	10-28-83	Termination		
	11-15-83	30-Day Special Needs Appointment	Confidential Assistant to Member	12
	11-18-83	Schedule C Appointment	Confidential Assistant to Member	12
	02-04-84	Termination		
	03-05-84	30-Day Special Needs Appointment	Confidential Assistant to Member	12
	04-05-84	30-Day Extension-Special Needs	Confidential Assistant to Member	12
	04-19-84	Schedule C Appointment	Confidential Assistant to Member	12
	10-01-85	Schedule C Appointment	Confidential Assistant to Member	12
3C	08-25-83	2-Month Consultant Appointment	Consultant	$205/day
	09-18-83	Schedule C Appointment	Special Asst. to Staff Director	15
	09-25-84	SES Noncareer Appintment	Asst. Staff Director, Programs & Policy	ES-3
	10-01-85	Termination		
4C	5-02-84	Schedule C Appointment	Confidential Secretary to Commissioner	7
5C	03-25-84	Schedule C Appointment	Deputy General Counsel	15
	12-09-85	Schedule C Appointment	Special Asst. to the Staff Director	15
6C	03-12-84	3-Month Detail to Office of the Staff Director	Special Legislative Liaison to Staff Director	12
	09-25-84	Schedule C Appointment	Special Assistant for Congressional Affairs	13
	03-03-85	Promotion-Schedule C	Special Assistant for Congressional Affairs	14
7C	10-29-84	30-Day Special Needs Appointment	Social Science Analyst	7
	11-28-84	30-Day Extension-Special Needs	Social Science Analyst	7
	12-27-84	Termination		
	01-03-85	1-Year Temporary Appointment	Social Scientist	7
	07-29-85	Schedule C Appointment	Special Assistant	11
8C	04-27-84	Schedule C Appointment	Confidential Secretary to Commissioner	9
	10-09-85	Schedule C Appointment	Special Assistant to Commissioner	11
9C	09-04-84	30-Day Special Needs Appointment	Public Affairs Specialist	12
	10-03-84	Schedule C Appointment	Public Affairs Specialist	12

ATTACHMENT II

Table II.1
Schedule C Employee
Appointment Chronology
(continued)

Employee	Date	Type of Action	Job Title	Grade
10C	02-23-84	3-Month Consultant Appointment	Consultant	$136/day
	05-18-84	Schedule C Appointment	Special Assistant to Staff Director	13
	10-12-84	Promotion-Schedule C	Special Assistant to Staff Director	14
	03-03-85	Promotion-Schedule C	Special Assistant to Staff Director	15
	10-25-85	SES Noncareer Appointment	Assistant Staff Director, Programs & Policy	ES-3
11C	03-19-84	Schedule C Appointment	Public Affairs Officer	14
	07-09-84	Promotion-Schedule C	Public Affairs Officer	15
	04-26-85	Resignation		
12C	05-21-84	Schedule C Appointment	Confidential Secretary to Staff Director	11
	10-12-84	Promotion-Schedule C	Confidential Assistant to Staff Director	12
	03-03-85	Promotion-Schedule C	Confidential Assistant to Staff Director	13
	04-19-85	Termination		
13C	02-24-84	3-Month Consultant Appointment	Consultant	$218/day
	05-25-84	4-Month Extension-Consultant	Consultant	$218/day
	09-02-84	30-Day Special Needs Appointment	Special Assistant	15
	10-02-84	30-Day Extension-Special Needs	Special Assistant	15
	10-03-84	Schedule C Appointment	Special Assistant	15
14C	04-16-84	30-Day Special Needs Appointment	Civil Rights Analyst	7
	05-17-84	30-Day Extension-Special Needs	Civil Rights Analyst	7
	05-27-84	4-Month Summer Appointment	Civil Rights Analyst	7
	10-01-84	1-Year Temporary Appointment	Social Science Analyst	7
	05-08-85	Schedule C Appointment	Confidential Special Assistant	12
	08-16-85	Resignation		
15C	09-17-84	Schedule A--Attorney Appointment	Attorney-Advisor	13
	12-09-85	Schedule C Appointment	Deputy General Counsel	15
16C	10-24-85	30-Day Special Needs Appointment	Special Assistant to General Counsel	7
	11-24-85	30-Day Extension-Special Needs	Special Assistant to General Counsel	7
	12-20-85	Schedule C Appointment	Special Assistant to General Counsel	11
17C	12-02-85	Schedule C Appointment	Special Assistant to Commissioner	15

ATTACHMENT III

REFERRALS FROM STATE EMPLOYMENT SERVICE OFFICES

The concern was that the Commission did not hire qualified applicants for vacant positions referred by the Washington, D.C., employment service office.

We were requested to determine whether the Commission notified the Washington, D.C., employment service office of job vacancies, the number of persons referred by the employment office, the number of referrals hired by the Commission, and reasons for not hiring referrals.

Federal agencies are required by 5 U.S.C. § 3327 to notify state employment service and OPM offices of any temporary vacancies that are to be filled in the competitive service without use of OPM's employment registers. OPM provides addresses of the offices to which the announcements should be sent. Agencies are also required to establish detailed procedures for operating their temporary employment programs to meet these requirements.

According to the Commission's Personnel Officer, temporary appointment announcements are sent to the employment service offices in Maryland, Virginia, and the District of Columbia. We found in our review of the Commission's recruitment files from October 1, 1982, to December 31, 1985, however, that the Commission did not have records showing that this had been done. None of the 13 temporary appointments requiring such notices that we reviewed showed sufficient evidence that the Commission had sent the vacancy announcements to the appropriate state employment and OPM offices. We believe sufficient evidence should include copies of the transmittal letters and announcements. For example, one recruitment file contained a notation that the notice was "called in." Such a procedure is not only inadequate to meet the notification requirements, but it also provides insufficient documentation on what information was provided. Moreover, the Commission's written administrative instructions do not address temporary employment actions using agency-established registers, including notification of the state employment and OPM offices.

Applicants who learn of federal job vacancies through a state employment office are given a referral slip by the office to attach to their applications. The employment offices do not notify the agencies of such referrals, but they do maintain records of all referral slips given. However, a Washington D.C., employment office official told us that his office does not maintain the records broken down by referrals to a specific

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agency. Agencies are asked to return the referral slips to the employment offices stating whether or not the applicants were selected.

The Commission's Personnel Officer stated that he did not know the specific number of applicants for Commission job vacancies referred by the state offices, since not all applicants attach their referral slips to their applications. He said the Commission maintains no separate records on how many people are referred by the state employment offices. However, he said he was able to reconstruct from referral slips attached to job applications 26 known referrals for 15 vacancies for the period October 1984 to December 1985. According to the Personnel Officer, 3 of the 26 referrals were qualified applicants but none were selected.

ATTACHMENT IV

AFFIRMATIVE ACTION

It was alleged that the Commission made no attempt to ensure that minorities and women were included in the applicant pool for jobs and that most of the employees hired since the reconstitution of the Commission (December 1, 1983) were white males.

We were requested (1) to determine the extent to which affirmative action was taken to hire and promote minority and women employees and (2) to determine the length of service with the Commission for those that have left since December 1, 1983.

Affirmative action hiring programs and accomplishment reports are required by 5 CFR 720. The Equal Employment Opportunity Commission has prescribed instructions, procedures, guidance, and formats for agencies to follow in implementing the law. We requested the Commission's affirmative action hiring goals and accomplishments for fiscal years 1983 through 1985. According to the Commission's Equal Employment Opportunity Director, the accomplishment report for 1985 and goals for 1986 were drafted and sent to the Staff Director for approval on December 23, 1985. As of February 25, 1986, they had not been approved, and the Staff Director would not release the 1985 accomplishment report for our review. Consequently, we were only able to review the accomplishments through fiscal year 1984.

We also requested the Commission's affirmative action promotion goals and accomplishments. However, agencies are not required to set specific goals for promotion of women and minorities, and, according to the Equal Employment Opportunity Director, the Commission has not established any such goals. Without the availability of promotion goals as criteria, we were unable to measure the Commission's success rate in promoting women and minorities.

Table IV.1 shows the Commission's hiring goals and reported accomplishments for fiscal years 1983 and 1984 and the hiring goals for 1985. They do not include temporaries and consultants. Goals are set for specific types of persons in specific job categories. The job categories are groupings of job series listed in Equal Employment Opportunity Commission instructions. Goals are determined by comparing the profile (numbers of women and members of minority groups) in the agency with the profile of the Washington, D.C., metropolitan area civilian labor force. The Commission's goals since fiscal year 1983 have focused primarily on the underrepresented

ATTACHMENT IV

minorities of American Indians/Alaska Natives, Asian Americans/Pacific Islanders, and Hispanics. Although the Commission has hired many women and minorities, it has not achieved the specific goals set in its affirmative action plans. The Commission partially met its goals in one job category in each of the two years (clerical category in 1983 and technical category in 1984).

Table IV.2 shows the workforce composition of the agency (other than consultants and temporaries) at the end of fiscal years 1983 and 1984. Table IV.3 is a breakdown, by groups, of the career and Schedule C employees hired by the Commission in fiscal years 1983 and 1984.

ATTACHMENT IV

Table IV.1
The Commission's Affirmative Action
Hiring Goals and Achievements
Fiscal Years 1983-1985

	1983			1984			1985	
Job category	Goals	Achievements	Other hires[1]	Goals	Achievements	Other hires	Goals	Achievements[2]	Other hires[2]
Professional	1 American Indian/ Alaskan Native Male or Female	0	1 White Male 1 White Female 1 Black Male 1 Black Female 1 Hispanic Female 1 Asian American/ Pacific Islander Female	1 Black Male 1 Asian American/ Pacific Islander or American Indian/ Alaskan Native	0	9 White Males 3 White Females 1 Black Female	1 White Female 1 Asian American/ Pacific Islander 1 American Indian/ Indian/Alaska Native		
Administrative	1 Hispanic Male 1 Asian American/ Pacific Islander	0	1 Hispanic Female	1 Hispanic Male 1 Asian American/ Pacific Islander or American Indian/Alaskan Native	0	4 White Males 4 White Females 4 Black Males 1 Black Female	1 Asian American/ Pacific Islander 1 American Indian/ Alaskan Native		
Technical	No goals		None	1 White Female 1 Asian American/ Pacific Islander or American Indian/Alaskan Native	1 White Female	1 Black Female	1 White Female 1 American Indian/ Alaskan Native		
Clerical	1 White Female 1 Asian American/ Pacific Islander Female	1 White Female	1 Black Female	1 Hispanic Male 1 Asian American/ Pacific Islander or American Indian/ Alaskan Native	0	1 White Male 3 White Females 2 Black Males 9 Black Females 3 Hispanic Females	1 Hispanic Male 1 Asian American/ Pacific Islander 1 American Indian/ Alaskan Native		
Other	No goals		None	No goals		None	No goals		

[1]Based on our review of the Commission's personnel actions (standard form 50) and monthly personnel reports upon which the affirmative action statistics are based, we found three additional employees hired in fiscal year 1983 that are not included in the table: one white female, one hispanic female, and one black male. All three were in the professional job category.

[2]Information on 1985 hiring results was not available as of February 25, 1986.

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Table IV.2
Commission Workforce Composition
Fiscal Years 1983 and 1984

	1983	1984
Male	82	83
Female	135	132
White Male	32	39
White Female	36	33
Black Male	32	30
Black Female	80	78
Hispanic Male	14	11
Hispanic Female	16	16
Asian American/ Pacific Islander Male	4	3
Asian American/ Pacific Islander Female	3	3
American Indian/ Alaskan Native Male	0	0
American Indian/ Alaskan Native Female	0	0

The Commission's Equal Employment Opportunity Director, who joined the Commission in May 1984, had no explanation as to why hiring goals had not been met for fiscal years 1983 and 1984. She did not believe that the Commission was experiencing any difficulty reaching any of the target groups. She said that she had expanded the Commission's outreach programs since joining the Commission. For example, she said that she and her staff attend training programs and conferences attended by women and minorities in the attempt to attract women and minorities to the Commission.

Table IV.4 shows the sex and race of most employees that the Commission promoted in fiscal years 1983, 1984, 1985, and 1986 through December 31, 1985. We were able to develop this information by using Commission personnel records and assistance from the Commission's Equal Employment Opportunity Director. She said, however, that she was not able to provide race data on seven promotions because they were given to temporary employees for which data on race was not recorded, and she had no personal knowledge of their race.

We also calculated the average length of service at the Commission for those employees (excluding temporaries and consultants) who left the agency between December 1, 1983, and December 31, 1985. We found that, on average, these individuals had about 5 years 9 months of service at the Commission. Table IV.5 shows the composition of the staff that left the agency during this period.

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Table IV.3
Career and Schedule C
Employees Hired by the Commission
Fiscal Years 1983 and 1984

	1983	1984
Vacancies filled	12	46
Vacancies filled by:		
Male	3	20
Female	9	26
White Male	1	14
White Female	3	11
Black Male	2	6
Black Female	2	12
Hispanic Female	3	3
Asian American/ Pacific Islander Female	1	0

Table IV.4
Promotion of Commission Employees
Fiscal Years 1983-1986

	Fiscal years			
	1983	1984	1985	1986[b]
Male	5	10	13	3
Female	8	18	15	6
White Male	2	2	7	1
White Female	2	2	8	2
Black Male	3	6	2	0
Black Female	6	12	5	3
Hispanic Male	0	1	2	0
Hispanic Female	0	4	0	0
Asian American/ Pacific Islander Male	0	0	1	0
Male, Race unknown[a]	0	1	1	2
Female, Race unknown[a]	0	0	2	1

[a]The Commission did not have data on racial composition for seven temporary promotions.

[b]Through December 31, 1985.

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Table IV.5
Attrition of Commission Employees
12/1/83 to 12/31/85

	Fiscal years		
	1984[a]	1985	1986[b]
Male	7	10	6
Female	6	22	3
White Male	4	4	3
White Female	2	8	0
Black Male	3	5	2
Black Female	3	13	1
Hispanic Male	0	0	1
Hispanic Female	1	1	2
Asian American/ Pacific Islander Male	0	1	0
Asian American/ Pacific Islander Female	0	0	0
American Indian/Alaskan Native Male	0	0	0
American Indian/Alaska Native Female	0	0	0

[a]Since December 1, 1983.

[b]Through December 31, 1985.

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AWARDS AND PROMOTIONS

The concern was expressed that employees hired after the Commission was reconstituted were receiving more favorable treatment than those employees hired before the reconstitution. Those hired after the Commission's reconstitution were alleged to be receiving more frequent and prompt awards and promotions.

We were requested to (1) examine the pattern of awards and promotions given to employees hired before and after December 1, 1983, (2) identify how many awards and promotions went to career employees and political appointees, and (3) determine whether any employees received more than one promotion or award within a one-year period.

AWARDS

We reviewed monetary awards given to Commission employees from October 1, 1982, through December 31, 1985. Three basic types of awards were included in our analyses: (1) special achievement awards; (2) quality step increases; and (3) merit pay or, beginning in fiscal year 1985, Performance Management and Recognition System cash awards. Special achievement awards are granted for either a one-time special act, service or achievement, or sustained superior performance. Quality step increases serve to recognize individuals for sustained high quality performance. Merit pay or Performance Management and Recognition System awards parallel the special achievement awards provisions for other employees. Only employees in grades GM-13 to GM-15 are eligible for this type of award.

Table V.1 shows the total amounts awarded in each category. As shown in the table, merit pay and its replacement, Performance Management and Recognition System awards, constituted over one-half of the dollar amount of all awards in fiscal years 1984 and 1985.

Between October 1, 1982, and December 31, 1985, eleven employees received one or more awards less than one year after receiving a previous award (one employee received three awards, each less than a year following the previous one). All of these individuals were career employees who had been hired by the Commission before December 1, 1983, when the Commission was reconstituted.

Table V.2 shows awards given, by year, to employees hired before and after the reconstitution of the Commission as well as those given to career and noncareer employees. As of October

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1984, 22 percent of the Commission's career, temporary, and Schedule C employees and as of September 1985, 29 percent were hired after December 1, 1983. The majority of award recipients were career employees who were employed by the Commission before December 1, 1983. In fiscal year 1985, employees hired after December 1, 1983, received 25 percent of the awards, which represented 30.5 percent of the total dollar amount of awards given. Also, beginning in fiscal year 1985, the average award amounts were greater for those employees receiving awards that were hired after December 1, 1983, than for those employees hired earlier. This trend continued during the first 3 months of fiscal year 1986.

TABLE V.1
TYPES OF COMMISSION AWARDS
Fiscal Years 1983-1986

	Fiscal years			
	1983	1984	1985	1986[a]
Total awards				
Amounts	$15,317[b]	$77,541	$59,120	$6,950
Numbers	27	51	28	8
Average amounts	$613[b]	$1,520	$2,111	$869
Special achievement awards				
Amounts	$7,070[b]	$33,976	$21,220	$6,950
Numbers	17	36	16	8
Average amounts	$471[b]	$944	$1,326	$869
Quality step increases				
Amounts	$4,946	$0	$0	$0
Numbers	7	0	0	0
Average amounts	$707	$0	$0	$0
Merit pay/performance management and recognition system				
Amounts	$3,301	$43,565	$37,900	$0
Numbers	3	15	12	0
Average amounts	$1,100	$2,904	$3,158	$0

[a]Through December 31, 1985.

[b]Does not include two awards of unknown amounts.

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TABLE V.2
NUMBER AND AMOUNTS OF COMMISSION AWARDS
Fiscal Years 1983-1986

	Fiscal years			
	1983	1984	1985	1986[a]
Total awards				
Number of awards	27	51	28	8
Number of recipients	27	45	28	8
Total amounts	$15,317[b]	$77,541	$59,120	$6,950
Average amounts	$613[b]	$1,520	$2,111	$869
Employees hired before December 1, 1983				
Amounts	$15,317[b]	$75,391	$41,070	$5,950
Numbers	27	49	21	7
Average amounts	$613[b]	$1,539	$1,956	$850
Employees hired after December 1, 1983				
Amounts	N/A	$2,150	$18,050	$1,000
Numbers	N/A	2	7	1
Average amounts	N/A	$1,075	$2,579	$1,000
Career employees				
Amounts	$15,317[b]	$71,541	$54,370	$5,950
Numbers	27	48	25	7
Average amounts	$613[b]	$1,490	$2,175	$850
Temporaries				
Amounts	0	$500	$4,750	0
Numbers	0	2	3	0
Average amounts	0	$250	$1,583	0
Schedule Cs				
Amounts	0	$5,500	0	$1,000
Numbers	0	1	0	1
Average amounts	0	$5,500	0	$1,000

[a]Through December 31, 1985.

[b]Does not include two awards of unknown amounts.

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PROMOTIONS

We reviewed promotions for fiscal year 1983 through the first quarter of fiscal year 1986 to determine how many went to Commission employees hired before and after December 1, 1983. Table V.3 shows that until the first 3 months of fiscal year 1986, most of the promotions went to career employees and employees hired prior to December 1, 1983.

Promotions to positions of greater responsibility can occur in various ways. A person can be promoted through: (1) a permanent promotion; (2) a temporary promotion (not to exceed a specified date); (3) a promotion resulting from a conversion from one appointment to another (can be the same or a different type of appointment); or (4) other actions resulting in a promotion such as reassignments. Most of the Commission's promotions, as shown in table V.3, occurred in the first two ways. The Commission on one occasion, in October 1982, used an extension of appointment action to promote an employee. According to the Federal Personnel Manual, extensions are not to be used for this purpose. The Commission's Personnel Officer informed us that, if he had processed the action, he would have used the conversion to new temporary appointment action.

Career federal employees above GS-5 must serve at least 1 year in grade before becoming eligible for promotion. This restriction does not apply to promotions within the excepted service, such as those of Schedule C employees, students (whose employment is dependent upon their being in school), or attorneys. During the period we examined, 10 Commission employees were promoted without serving 1 year in the prior grade. All 10 employees were in groups exempted from the 1-year service requirement. Five of them were Schedule C employees. One Schedule C employee was promoted three times in less than 17 months, and another was promoted twice in less than 10 months.

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TABLE V.3
PROMOTIONS
Fiscal Years 1983-1986

	Fiscal years			
	1983	1984	1985	1986[a]
Totals	13	28	28	9
Number of				
--permanent promotions	8	15	21	3
--temporary promotions	3	7	2	2
--conversions from one type of appointment to another, resulting in promotion	1	6	4	4
--other actions resulting in promotion	1	0	1	0
Number to				
--career	10	22	18	4
--noncareer	3	6	10	5
Number to				
--employees hired before December 1, 1983	13	24	14	3
--employees hired after after December 1, 1983	N/A	4	14	6

[a]Through December 31, 1985.

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COMMISSIONERS' AND SPECIAL ASSISTANTS' BILLINGS

Concern was expressed that the Chairman of the Commission and his Special Assistant billed the agency for work on an almost full-time basis, while such positions are supposedly part-time positions.

We were requested to examine the billings for the Commissioners and their Special Assistants to determine how the billings comport for part-time positions. We were also requested to examine the roles of the Commissioners' Special Assistants and to determine whether the tasks they billed the Commission reflected the nature of work expected from Special Assistants.

The U.S. Commission on Civil Rights Act of 1983 (Public Law 98-183) Sec. 4 (a) states that:

> "Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive a sum equivalent to the compensation paid at level IV of the Federal Executive Salary Schedule, pursuant to section 5315 of title 5, United States Code, prorated on a daily basis for each day spent in the work of the Commission ..."

The act does not limit the number of days the Commissioners can work each year. Similarly, there is no limitation in the act on the number of days their Special Assistants can work.

Commissioners' and Special Assistants' Salaries and Billing Days

The reported salaries and the number of days billed by the Commissioners and their Special Assistants for fiscal years 1983, 1984, and 1985 are shown in table VI.1. The salaries and days billed were provided by the Commission's Office of Management. The number of days billed represents the equivalent number of 8-hour days worked. For example, if a Commissioner worked 4 hours one day and 4 hours on another day, the total days billed would be one. The Commissioners for whom the Special Assistants worked are noted next to the Special Assistant's name in table VI.1.

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TABLE VI.1
Salaries and Days Billed For
Commissioners and Special Assistants
Fiscal Years 1983-1985

Commissioners/ Special Assistants	1983 Salary	1983 Days[a]	1984 Salary	1984 Days[a]	1985 Salary	1985 Days[a]
Commissioners						
Pendleton	$58,385	233	$62,162	233	$67,344	240
Berry	24,303	97	15,741	59	13,895	50
Smith[a]	10,455	42	1,734	7	--	--
Ramirez	12,455	50	10,021	38	7,263	26
Ruckelshaus[a]	12,363	51	1,601	6	--	--
Saltzman[c]	11,622	46	534	2	--	--
Abram[d]	--	--	10,295	39	11,631	41
Buckley[d]	--	--	11,455	43	19,381	69
Bunzel[d]	--	--	13,822	52	28,781	103
Destro[d]	--	--	17,032	64	21,231	76
Guess[d]	--	--	6,854	26	16,391	58
Special Assistants						
Novell (Pendleton)	$28,942	221	$29,231	179	$41,328	239
Edwards (Berry)	38,334	261	9,603	63	15,478	99
Brown (Smith)[e]	951	15	143	2	--	--
Garza (Ramirez)[f]	14,462	128	4,442	39	--	--
Arredondo (Ramirez)[g]	--	--	3,496	24	14,081	208
Ferrone (Abram)[h]	--	--	523	9	1,586	19
Van de Weighe (Destro)[i]	--	--	3,894	59	370	5
Bryant (Guess)[j]	--	--	--	--	7,489	137
Wolf (Abram)[k]	--	--	--	--	1,129	11
Stuart(Destro)[l]	--	--	--	--	4,891	90
Lawrence (Destro)[m]	--	--	--	--	662	12
Bratton (Buckley)[n]	--	--	--	--	2,732	50

[a]Rounded to nearest full day.
[b]Appointment ended Nov. 1983.
[c]Appointment ended Oct. 1983.
[d]Appointed Dec. 1983.
[e]Employed from Nov. 1982 to Nov. 1983.
[f]Employment ended Feb. 1984.
[g]Employed May 1984.
[h]Employed April 1984.
[i]Employed from May 1984 to May 1985.
[j]Employed from May 1984 to Sept. 1985.
[k]Employed from Nov. 1984 to Sept. 1985.
[l]Employed from Aug. 1984 to May 1985.
[m]Employed May 1985.
[n]Employed Oct. 1984.

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Missing Salary Vouchers and Variances Between Salary Vouchers and Office of Management Records

We found instances where there were no vouchers in the files to support salaries paid to the Commissioners' Special Assistants.[1] We also found instances where substantial variances existed between total days worked by Special Assistants, as reported on their salary vouchers, and the Office of Management's records of salary paid. Variances between these documents also existed for some of the Commissioners.

There were no fiscal year 1983 salary vouchers in the files for Special Assistants Edwards, Brown, and Garza. Similarly, there were no fiscal year 1984 salary vouchers in the files for Special Assistants Brown, Garza, and Van de Weighe. We brought this matter to the attention of the Assistant Staff Director for Administration, and he could not account for the missing salary vouchers.

For fiscal year 1985, salary vouchers were in the files for the Special Assistants, but there were substantial variances between the total days worked shown on the vouchers and the Office of Management salary payment records. We also noted variances for four of the eight Commissioners. The variances are shown in table VI.2.

The Commission has no administrative instruction covering the procedures to be used by the Commissioners and their Special Assistants in preparing their salary vouchers. According to the Assistant Staff Director for Administration, the same instruction that applies to experts and consultants also applies to the Commissioners and their Special Assistants. This instruction requires that the following information be included on the salary vouchers:

--the project code, when possible, for activities performed,

--the date(s) of services performed,

--a brief description of the services performed, and

--the number of hours worked for each project.

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[1]Unlike the other Special Assistants, who have intermittent appointments, Special Assistant Arredondo is a part-time Schedule C employee. As such, she is not required to submit salary vouchers.

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Table VI.2
Variances in Reported Days Worked and
Salary Payments for Commissioners and Special Assistants
Fiscal Year 1985

	Days Worked		
	Office of Management payment records	Salary vouchers	Variances
Commissioners			
Pendleton	240	240	0
Abram	41	45	4
Berry	50	50	0
Buckley	69	73	4
Bunzel	103	79	24
Destro	76	74	2
Guess	59	59	0
Ramirez	26	26	0
Special Assistants			
Bratton	50	57	7
Bryant	137	93	44
Edwards	99	105	6
Ferrone	19	21	2
Novell	239	240	1
Stuart	90	74	16
Wolf	11	11	0
Van de Weighe	5	8	3
Lawrence	12	84	72

The instruction also requires the signature of the individual submitting the salary voucher and the signature of the authorized approving official before any time card documents are sent to the payroll office for payment.

During our review of the salary vouchers, we noted several instances of noncompliance with this instruction. Some individuals either used a form which did not provide space for stating the nature of the services performed or used the proper form but did not state the nature of their duties. We also found a few instances where the vouchers were not signed by the claimant or the approving official. Moreover, in discussing the variances noted above, the Assistant Staff Director for Administration told us that changes were often made to payroll documentation based on telephone conversations rather than requiring the claimants to submit new or revised salary vouchers.

The Assistant Staff Director for Administration agreed that stricter enforcement of the instruction is needed to improve accountability. Accordingly, he said he had discussed this matter with the Commission's Staff Director and plans to prepare a memorandum describing the problem and suggesting corrective action.

Nature of Work Performed by Commissioners and Special Assistants

The nature of the work performed by the Commissioners and their Special Assistants as reported on their salary vouchers fell into five broad categories. These categories included:

--reading and commenting,
--speech preparation/correspondence,
--time in transit,
--meetings and speeches, and
--other.

Table VI.3 shows the proportion of time, as indicated by available salary vouchers, that each Commissioner and Special Assistant spent on each of these categories during fiscal year 1985. There are, however, several qualifications to our computations of their work as reported on salary vouchers. In some instances, the total time for a day was charged to several categories. In those cases, we divided the time evenly among the categories. However, when the individual was in transit and charged time to both transit and other categories, we allocated all such time to transit. Four Special Assistants (Edwards, Van de Weighe, Stuart, and Bratton) submitted salary vouchers but did not note the nature of their work. Also, according to the Assistant Staff Director for Administration, one Special Assistant (Arredondo) worked a consistent 64 hours each

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bi-weekly pay period, and her timesheets did not indicate the nature of the work performed. Therefore, we could not include these five Special Assistants in our analysis. Finally, as previously stated, there were missing salary vouchers for both Commissioners and Special Assistants. The Commission staff could not account for such vouchers.

TABLE VI.3
Nature of Work Reported by
Commissioners and Special Assistants
Fiscal Year 1985

	Reading and commenting	Speech prep./ correspondence	Time in transit[a]	Meetings and speeches	Other[b]
	(percentages)				
Commissioners					
Pendelton	12	19	31	26	12
Abram	17	6	43	19	15
Berry	94	0	3	3	0
Buckley	41	1	28	20	10
Bunzel	48	2	23	18	9
Destro	15	16	10	53	6
Guess	76	2	9	4	9
Ramirez	19	0	18	8	55
Special Assistants					
Novell	9	59	15	15	2
Bryant	72	2	0	0	26
Ferrone	1	46	6	2	45
Lawrence	0	45	0	5	50
Wolf	18	0	12	29	41

[a]Includes travel to and from Commission meetings as well as other Commission-related travel. All Commissioners other than Berry and Destro live outside the Washington, D.C. area.

[b]Other includes such functions as media interviews, press conferences, research, and scheduling.

Reported Work is Consistent with Special Assistants' Position Descriptions

We reviewed the position descriptions for the Special Assistants to the Commissioners and the Special Assistant to the Chairman to compare the duties described with the work reported on the Special Assistants' billings that were available for

fiscal year 1985. We found that the nature of the work reported by five Special Assistants, including the Special Assistant to the Chairman, (the only Special Assistants for whom salary vouchers showing the nature of their work were available) to be generally in line with the duties set forth in their position descriptions.

According to their position descriptions, Special Assistants to Commissioners are to consult with Commission staff, locate and acquire documentation, and make recommendations to the Commissioners. They are also required to draft letters and speeches and make arrangements for their Commissioners' attendance at meetings, hearings, consultations, and appearances before congressional committees. The Special Assistants are responsible for ensuring that all administrative documents such as time cards, travel vouchers, and requests for reimbursement are submitted and processed expeditiously. Also, they are required to prepare replies, for the Commissioners' signature, to inquiries concerning matters related to Commission programs and projects.

Work performed by the Special Assistants to the Commissioners, to the extent that four of them described it on their salary vouchers, included such tasks as:

--contacting and meeting with Commission staff;

--reading, commenting, and conducting research;

--attending Commission meetings, hearings, etc.;

--preparing correspondence, statements and other materials;

--filing, organizing, making travel arrangements, and preparing time records; and

--reviewing state advisory committee reports, case summaries, etc.

According to her position description, the Special Assistant to the Chairman is to conduct research into current civil rights, equal protection, and administration of justice issues and advise the Chairman on those matters that may be appropriate for discussion by the Commissioners. She is also to develop data for the Chairman in support of, or opposition to, proposed Commission policy, programs, or projects. In addition, the incumbent is to consult, as necessary, with Commission staff, representatives of other federal agencies and with representatives of civil rights groups to obtain various types of information. She is to draft correspondence and speeches, based on her knowledge of the Chairman's position on various issues, and to coordinate plans for his speaking engagements. She is to review written material and documents related to Commission hearings, consultations, studies, etc. and

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advise the Chairman as to recommended positions, modifications, etc. Finally, she may recommend additions, deletions or other changes to the agenda for meetings of the Commissioners.

Work performed by the Special Assistant to the Chairman, to the extent that it was described on her salary vouchers, included such tasks as:

--conducting meetings with Commission staff and staff from other agencies;

--traveling in support of the Chairman;

--preparing speeches, correspondence and other material;

--attending Commission meetings, state advisory committee meetings, hearings, meetings with civil rights groups and meetings with media representatives;

--performing miscellaneous press work;

--scheduling the Chairman's time; and

--reading, commenting, and conducting research.

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COMMISSIONERS' AND SPECIAL ASSISTANTS' FINANCIAL DISCLOSURE REPORTS

The question was raised as to how the Chairman of the Commission and his Special Assistant could receive almost full-time compensation from the Commission and also be employed elsewhere.

We were requested to examine the Commissioners' and Special Assistants' financial disclosure reports to determine what portion of their total income was derived from the Commission.

Requirements for filing public financial disclosure reports (SF 278) are set forth in 5 CFR 734. The purpose of these reports is to provide a means for high level[1] federal employees to disclose their personal financial interests and demonstrate that they are able to carry out their duties without compromising the public trust. The review of the information provided in these reports serves to deter conflicts of interest in the case of current employees and to identify potential conflicts of interest in the case of newcomers to government service. Statements of income, assets, and liabilities must be reported by the President and Vice President, presidential appointees, members of the Senior Executive Service, employees in confidential or policy making positions (Schedule C) and career employees in grade GS 16 and above including comparable officers in the uniformed and foreign services.

The regulations require each individual who performs the duties of his or her position or office for a period in excess of 60 days during any calendar year to file a financial disclosure report on or before May 15 of the succeeding year. Although these reports are to be reviewed within 60 days of the filing date, the individual filing the report is responsible for its accuracy, and the reports are not routinely audited to determine whether the disclosures are correct.[2]

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[1]Employees at lower levels (GS-13 to GS-15) also file reports, but they are not available to the public.

[2]Since 1983, the appointment of Commissioners has not been subject to Senate confirmation. As a result, copies of their financial disclosure reports are no longer required to be transmitted to the Director, Office of Government Ethics, OPM.

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We did not attempt, as part of our review, to determine the completeness or accuracy of the financial disclosure reports filed by Commission officials. However, we noted that questions have been raised by the Small Business Administration about the amount of outside income of the Commission's Chairman and his Special Assistant from their participation in packaging Small Business Administration loans. The Small Business Administration was reviewing this matter at the time we completed our work.

We requested financial disclosure reports covering calendar years 1982, 1983, and 1984 for the 11 Commissioners and 12 Special Assistants who served at the Commission during fiscal years 1983 through 1985. Not all were required to file reports because of the 60-day criteria noted above. Table VII.1 shows the 5 Commissioners and 2 Special Assistants who filed at least one financial disclosure report during the 3-year period. Table VII.1 also shows the latest year for which a report was filed.

TABLE VII.1
COMMISSIONERS AND SPECIAL ASSISTANTS
FILING FINANCIAL DISCLOSURE REPORTS
1982-1984

Commissioners	Calendar year[a]
Pendleton	1984
Abram	1982
Berry	1983
Bunzel	1984
Destro	1984
Special Assistants	
Novell	1984
Edwards	1984

[a]Most recent calendar year for which the individual was required to submit a financial disclosure report.

We examined the latest financial disclosure reports submitted by these seven individuals and compared their reported income from other sources to their Commission income to determine the proportion of their total income earned from the Commission.

There are limitations on using financial disclosure reports in this fashion. The reports do not provide a sound basis for determining the amount of income received outside the Commission. While salary and all other earned income must be

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reported exactly, dividends, rental income, interest income, capital gains, and income from trusts are stated in ranges which are often too large to be meaningful for estimating income. For example, the report calls for stating such incomes in ranges between $15,000 and $50,000; $50,000 and $100,000; and over $100.000. Spousal income is also shown on the financial disclosure reports, but we did not include it in our computations. The financial disclosure reports are submitted on a calendar year basis while the Commissioners' and Special Assistants' Commission salaries are accumulated for budgetary purposes on a fiscal year basis. Thus, income from both sources covers a 12-month period but with a 3-month difference in the period covered. Additionally, honoraria are required to be reported only if they total more than $100 individually.

With an awareness of the limitations cited above, we attempted to determine the proportion of these seven Commissioners' and Special Assistants' total income represented by their Commission salaries. The basis for such an analysis was non-Commission income reported in the calendar year covered by their most recently filed financial disclosure statement and their Commission salary for the comparable fiscal year. For example, if the latest financial disclosure report covered calendar year 1984, we compared it to fiscal year 1984 Commission salary. The only exception was for Commissioner Abram. We had to compare his 1982 financial disclosure report (his only report) to his fiscal year 1984 Commission salary (his first year as a Commissioner).

We found that none of the seven Commissioners or Special Assistants relied on their Commission salary as their sole source of income. Also, for none of the Commissioners was their Commission salary greater than 50 percent of their total reported income, even when the lower end of the range of reported outside income was used. Except for one Commissioner, whose Commission salary was minimal in relation to total income, individual Commissioners' salaries from the Commission ranged from 14 to 50 percent of their total incomes. One of the Special Assistant's Commission salary represented over 75 percent of total reported income while the other Special Assistant's salary represented less than 60 percent of total reported income.

We also analyzed the seven Commissioners' and Special Assistants' Commission salaries in comparison to their reported outside earned income, including salaries, honoraria, and partnership income. As was the case in the comparison above, one Commissioner's salary was minimal in relation to total earned income. The remaining Commissioners' salaries from the Commission ranged from 20 to 69 percent of their total earned income. For the two Special Assistants, their Commission salaries represented 82 and 100 percent, respectively, of their total earned income.

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COMMISSIONERS, SPECIAL ASSISTANTS, STAFF DIRECTOR, AND OFFICE OF GENERAL COUNSEL TRAVEL

Commission travel was allegedly increasing in recent years, especially for the Commissioners and Special Assistants.

We were requested to (1) examine the travel vouchers for the Commissioners, Special Assistants, Staff Director, and Office of General Counsel staff to determine whether there were any overseas trips and whether any individuals traveled first class and (2) ascertain the policy for Commissioners' travel. We were also asked to compare the extent of travel for the Commissioners, Special Assistants, and Staff Director before and after the Commission was reconstituted in December 1983.

Total travel costs for the Commission for fiscal years 1982 through 1985 were about $456,000, $345,000, $395,000, and $503,000, respectively. We reviewed travel by the Commissioners, the Special Assistants, and the Staff Directors for these fiscal years. We also reviewed travel by the staff of the Commission's Office of General Counsel for this period.

Commissioners' Travel Policy

Each Commissioner has a blanket travel authorization which covers all travel within the continental limits of the United States for a full fiscal year.

Commissioners and employees are required to abide by General Service Administration travel guidelines. For example, they are required to use contract fares whenever possible. When no such fares exist, they are required to use coach or the lowest fare available unless emergency or extenuating circumstances exist.

Fiscal Years 1982 Through 1985 Travel by Commissioners, Special Assistants, and Staff Directors

Travel by the Commissioners, Special Assistants, and Staff Directors was to attend or participate in such activities as Commission meetings, hearings, and conferences or to make speeches.

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The number and cost of trips taken by these individuals during fiscal years 1982 through 1985 are set forth in table VIII.1.[1] These statistics show that, while the number of trips taken by all of the Commissioners remained relatively constant, the cost of such trips increased during the period. Also, the number of Commissioners increased from 6 to 8 in fiscal year 1984 as a result of the U.S. Commission on Civil Rights Act of 1983. The statistics also show that the total number and cost of trips taken by the Staff Director were higher in fiscal years 1984 and 1985 than in fiscal years 1982 and 1983. The number and cost of trips taken by the current Chairman's Special Assistant increased steadily over the four years.

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[1]The number and cost of trips taken, as shown in table VIII.1, were obtained from the Commission's Office of Management files.

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TABLE VIII.1
COMMISSIONERS, SPECIAL ASSISTANTS, AND STAFF DIRECTORS TRAVEL, FISCAL YEARS 1982 - 1985

	Fiscal years							
	1982		1983		1984		1985	
Commissioners	#	Amount	#	Amount	#	Amount	#	Amount
Flemming[a]	9	$ 2,712	--	--	--	--	--	--
Pendleton	20	12,097	31	$20,194	30	$23,200	36	$29,300
Smith[b]	9	4,826	12	5,565	1	510	--	--
Horn[a]	6	3,535	--	--	--	--	--	--
Ramirez	9	6,248	10	5,520	7	3,146	3	1,600
Berry	17	4,714	10	2,772	8	1,492	2	500
Saltzman[c]	12	2,596	13	1,834	1	103	--	--
Ruckelshaus[d]	6	3,797	5	3,408	--	--	--	--
Abram[e]	--	--	--	--	9	1,993	14	3,500
Bunzel[e]	--	--	--	--	8	9,958	11	17,200
Guess[e]	--	--	--	--	7	3,623	14	8,000
Buckley[e]	--	--	--	--	7	4,670	9	6,000
Destro[e]	--	--	--	--	7	2,643	4	1,500
Subtotal	88	$40,525	81	$39,293	85	$51,338	93	$67,600
Staff Directors								
Hope (acting)[f]	12	$ 3,200	4	$ 1,628	--	--	--	--
Chavez[g]	--	--	2	954	21	7,119	15	6,205
Green (acting)[h]	--	--	--	--	--	--	--	--
Subtotal	12	$ 3,200	6	$ 2,582	21	$ 7,119	15	$ 6,205
Special Assistants								
Novell	4	$ 2,239	7	$ 5,802	12	$ 8,546	21	$14,800
Wolf[i]	--	--	--	--	--	--	1	800
Ferrone[j]	--	--	--	--	--	--	1	300
Arredondo[k]	--	--	--	--	--	--	1	400
Bryant[l]	--	--	--	--	--	--	1	1,000
Bratton[m]	--	--	--	--	--	--	1	300
Subtotal	4	$ 2,239	7	$ 5,802	12	$ 8,546	26	$17,600
Total	104	$45,964	94	$47,677	118	$67,003	134	$91,405

[a]Appointment ended April 1982.
[b]Appointment ended Nov. 1983.
[c]Appointment ended Oct. 1983.
[d]Appointment ended Nov. 1983.
[e]Appointed Dec. 1983.
[f]Tenure ended Aug. 1983.
[g]Employed Aug. 1983 and served to April 1985.
[h]Served as Acting Staff Director from April 1985 to Oct. 1985.
[i]Employed from Nov. 1984 to Sept. 1985.
[j]Employed April 1984.
[k]Employed May 1984.
[l]Employed from May 1984 to Sept. 1985.
[m]Employed Oct. 1984.

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First Class and Overseas Travel

One Commissioner travels first class routinely. Such travel was approved by the Commission's Staff Director on December 27, 1983. The approval was based on a letter, dated December 12, 1983, to the Staff Director from a physician recommending that the Commissioner be permitted to travel first class for medical reasons.

With respect to overseas travel, the Staff Director visited Israel in January 1985 at the Commission's expense. The trip was made at the request of the Government of Israel and is the only instance of overseas travel paid by the Commission during fiscal years 1982 through 1985. The purpose of the trip, as stated on the travel authorization, was to discuss affirmative action and civil rights issues with Israeli officials.

We discussed Commission travel with General Services Administration (GSA) representatives who are responsible for reviewing vouchers submitted by Commission personnel for compliance with travel regulations.[2] These individuals were familiar with the routine first class travel by one of the Commissioners and the few other instances of first class travel and found such travel to be in compliance with regulations. The other instances of first class travel (3 over the 4-year period) were attributed to illness and unavailability of contract or coach fares. Moreover, we were advised by the GSA staff that Commission personnel, including the Commissioners, Special Assistants, and Staff Directors, have generally been in compliance with GSA travel regulations, and only small amounts have been disallowed on individual vouchers over the years.

Travel by Office of General Counsel Staff has Diminished

Travel by the Commission's Office of General Counsel staff has diminished substantially since fiscal year 1982. Office of Management records show that personnel assigned to General Counsel made 45 trips in fiscal year 1982, 4 trips in fiscal year 1983, 10 trips in fiscal year 1984, and 6 trips in fiscal year 1985. Also, they appeared to be much more heavily involved in preparing for hearings in the field and otherwise participating in projects in the field in fiscal year 1982 than in more recent fiscal years. Table VIII.2 shows the breakdown by fiscal year of trips devoted to mission-related projects as opposed to those trips taken to attend training and planning conferences or to make speeches or participate in panel discussions.

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[2]The Commission has contracted with GSA for certain administrative services such as travel, payroll, and bill paying.

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The mission-related trips taken by the Office of General Counsel for fiscal years 1982 to 1985 were to work on hearings projects. In fiscal year 1982, the Office of General Counsel's mission-oriented trips were almost all related to work on three hearings: the growth industries hearing project on opportunities and the participation of minorities and women in high technology industry, the Baltimore hearing project dealing with urban minority economic development, and the Miami hearing project concerning the isolation of minorities in urban centers. The only mission-oriented trip made by the General Counsel's staff in fiscal year 1983 was for work on the Baltimore hearing project. All 11 mission related trips made during fiscal year 1984 and 1985 were for work on the handicapped newborn infants hearing project, concerning the witholding of medical treatment from infants on the basis of actual or potential handicaps.

TABLE VIII.2
OFFICE OF GENERAL COUNSEL TRAVEL
FISCAL YEARS 1982 - 1985

Fiscal year	Total trips		Purpose of trip: Training, speeches, planning, etc.		Purpose of trip: Work on mission related projects	
	Number	Amount	Number	Amount	Number	Amount
1982	45	$39,847	9	$4,187	36	$35,660
1983	4	1,253	3	1,234	1	19
1984	10	8,977	2	359	8	8,618
1985	6	3,097	3	1,889	3	1,208

Commission Travel Sometimes Paid for by Other Sources

During our review, we noted 45 instances where travel vouchers showed the Chairman's travel and/or lodging expenses were paid by "other sources" which were identified in 17 instances and not identified in 28 others. To a lesser extent, two other Commissioners (two instances) and three Commission employees (10 instances) had their travel expenses paid by outside sources. One of the Commissioners identified the source while the other Commissioner did not. In 8 of the 10 instances involving Commission employees, they did not identify the source.

Donations from private sources for official travel to conduct government business constitute an unauthorized augmentation of appropriations, unless the employing agency has statutory authority to accept gifts or the gift qualifies under

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5 U.S.C. § 4111. Under 5 U.S.C. § 4111, enacted as part of the Government Employees Training Act, an employee may accept (1) contributions and awards incident to training in non-government facilities, or (2) payment of travel, subsistence, and other expenses incident to attendance at meetings, only if the donor qualifies as a non-profit, tax exempt organization under 26 U.S.C. § 501(c)(3). Regulations promulgated by the Office of Personnel Management at 5 CFR 410.701 et seq. require prior written authorization for acceptance of such travel expenses, including certification that any contribution, award, or payment is not a reward for services to the organization prior to the training or meeting and acceptance of any payment does not create an actual or apparent conflict.

The Office of Government Ethics has suggested certain procedures which it considers essential to protect both the agency and the individual traveler from accepting gifts which improperly augment the agency's appropriations. These procedures are listed below:

--"All offers of payment of official travel expenses must be approved in writing prior to acceptance."

--"If possible, all offers should be approved by the same office within an agency so as to provide consistency of interpretation of applicable statutes and regulations."

--"All agency personnel should be made aware that such offers must be approved by the appropriate office."

--"Travel orders should note specifically what expenses are being accepted by the traveling employee and under what authority."

--"The traveling official should never be placed in a position of approving the acceptance of his or her own travel expenses."

--"If possible, a record of all travel expenses accepted should be kept by the agency in a central file."

We found that the Commission has no statutory authority to accept gifts. Therefore, unless the organizations which contributed to the Commissioners' and employees' travel qualified as non-profit tax exempt organizations under 26 U.S.C. § 501(c)(3), and all other requirements of CFR 410.701 et seq. were met, the Commission travelers had no authority to accept such payments. Such donations can also contribute a violation of 18 U.S.C. § 209, which deals with salary payments, but the Civil Rights Commissioners are exempt from the operation of that provision.

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We asked the Commission's Solicitor, who is also the Commission's designated ethics official, what procedures were in effect to insure that the acceptance of travel expenses was not an improper augmentation of the agency's appropriation. He said that the Commission has no procedures (or files) on this matter, and he relies on the traveler's knowledge of the law to insure that donor organizations are non-profit, tax exempt institutions as described by 26 U.S.C. § 501 (c)(3).

We also asked GSA officials whether they had included this issue in their review of Commission travel vouchers. They advised us that they had not. However, the Commission is responsible for ensuring that such unauthorized augmentations do not occur.

We requested from the Commission on February 6, 1986, the exact name and state of incorporation for the 57 instances where sources other than the Commission paid travel expenses for Commission employees or where such sources were not identified. The exact name and state of incorporation of the sources are needed to determine if the organizations qualify as non-profit, tax exempt institutions as described by 26 U.S.C. § 501(c)(3). By February 27, 1986, the Assistant Staff Director for Administration had provided us with information identifying the sources other than the Commission and the states of incorporation for most of them. Our review of this information shows that some of the outside sources should not have paid these expenses. These include such sources as an oil company, television networks, and political organizations.

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FISCAL YEAR 1985
APPROPRIATION EARMARKS

Concern was expressed that the Commission may have violated the congressionally-imposed earmarks to its fiscal year 1985 appropriation.

We were requested to examine the allocation of overhead among the various budget activities which were earmarked and to determine the method of allocation, including whether a standard formula existed for each budget activity.

The original fiscal year 1985 appropriation for the Commission totaled $12,747,000. The Congress "earmarked" the appropriation among seven budget activities. These "earmarks" had the effect of establishing separate appropriations for each of the activities. Any obligations exceeding the amount appropriated for any of the seven budget activities would violate the Anti-Deficiency Act.

The Anti-Deficiency Act provides that no officer or employee of the United States shall make or authorize any obligation or expenditure in excess of the amount available in the applicable appropriation (31 U.S.C. §1314(a)(1)(A)). Section 1351 of the Act requires that all violations of section 1341(a)(1)(A) to be reported by the agency immediately to the President, through the Director of the Office of Management and Budget, and to the Congress. The reports are required to contain the facts of the violation and a statement of the disciplinary action taken. If a deficiency appropriation is necessary to liquidate an over obligation, a request for such an appropriation would be part of the report.

Shifting Within the Earmarks

The Commission was successful in securing congressional approval of a change to its appropriation earmarks in fiscal year 1985. In August 1985, part of the funding for three budget activities (Publications Preparation and Dissemination, Federal Evaluation, and the Clearinghouse Library) totaling $421,000 was shifted to the budget activity for Hearings, Legal Analysis, and Legal Services. In addition, an August 1985 supplemental appropriation to cover employee pay raises increased the Commission's total appropriation by $122,000 to $12,869,000. Table IX.1 traces the effects of these changes on each budget activity.

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The Commission's seven budget activities involve nine program offices. The Office of Research and the program functions of the Office of Programs and Policy are funded by the Reports, Studies, and Program Monitoring budget activity. The Office of General Counsel and the Solicitor's Unit are funded by the Hearings, Legal Analysis, and Legal Services budget activity. The Office of Regional Programs, including the 10 regional offices, makes up the Field Operations budget activity. The Publications Management Division of the Office of Management is funded by the Publications Preparation and Dissemination budget activity. The Office of Federal Civil Rights Evaluation is funded by the Federal Evaluation budget activity. The Office of Congressional and Public Affairs is funded by the Liaison and Information Dissemination budget activity. The National Clearinghouse Library is funded by the Clearinghouse Library budget activity.

Other units of the Commission are included in overhead costs which are allocated to the seven budget activities on the basis of salary costs[1] incurred by the offices covered by each activity. These units include the Commissioners, the policy functions of the Office of Programs and Policy, the Office of Management, the Offices of the Staff Director and Deputy Staff Director, the Equal Employment Opportunity Unit, and the Planning and Coordination Unit.

The Commission's determination of program costs and overhead allocated to the seven budget activities for fiscal year 1985 are shown in table IX.2.

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[1]Includes the salaries of full time permanent employees and other staff such as temporary and part-time employees, and consultants. It does not include overtime and awards.

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Table IX.1
The Commission's Fiscal Year 1985
Earmarked Appropriation

Budget activity	Original earmark	Revised per Commission request	Revised for pay increases
Reports, Studies, and Program Monitoring	$ 2,299,000	$ 2,299,000	$ 2,320,000
Hearings, Legal Analysis, and Legal Services	1,642,000	2,063,000	2,083,000
Field Operations	4,999,000	4,999,000	5,047,000
Publications Preparation and Dissemination	831,000	747,000	753,000
Federal Evaluation	1,217,000	1,011,000	1,022,000
Liaison and Information Dissemination	1,231,000	1,231,000	1,244,000
Clearinghouse Library	528,000	397,000	400,000
Total	$12,747,000	$12,747,000	$12,869,000

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Table IX.2
Program Costs and Overhead Allocated to Budget Activities
Fiscal Year 1985

	Program costs	Overhead	Total obligations
Reports, Studies, and Program Monitoring	$1,354,000	$ 878,000	$ 2,232,000
Hearings, Legal Analysis, and Legal Services	1,146,000	825,000	1,971,000
Field Operations	3,013,000	2,034,000	5,047,000
Publications Preparation and Dissemination	467,000	282,000	749,000
Federal Evaluation	563,000	430,000	993,000
Liaison and Information Dissemination	717,000	497,000	1,214,000
Clearinghouse Library	259,000	141,000	400,000
Total	$7,519,000	$5,087,000	$12,606,000

Third Hearing in Fiscal Year 1985

The Commission, in its narrative justification for shifting funds to the Hearings, Legal Analysis, and Legal Services budget activity made the following statement in March 1985 during hearings before a House Appropriations Subcommittee:

> "The Commission proposes to hold a hearing, a combination hearing/consultation and to begin field work for a third hearing this fiscal year. This compares to earlier plans to hold two hearings."

In responding to a question raised during this hearing by the Subcommittee Chairman, the Commission's Staff Director said that the Commission planned to actually conduct three hearings ih fiscal year 1985 in contrast to the above statement indicating that only field work would be started during the year on the third hearing.

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In recommending approval of the change in the budget earmarks, the House Appropriations Committee's report on the 1985 supplemental appropriations bill (99-142) stated that "The proposed language changes will enable the Commission to adopt its program to include a third hearing for fiscal year 1985 beyond the two hearings provided for by the fiscal year 1985 Appropriations Act."

Only two hearings were held during fiscal year 1985. They included a consultation/hearing on affirmative action in March 1985 and a hearing on handicapped newborn infants in June 1985. The third, a consultation/hearing on housing discrimination, was not held until November 1985. Therefore, we requested in late November 1985 a breakdown from the Commission showing how the $421,000 transferred into the Hearings, Legal Analysis, and Legal Services budget activity had been spent.

After repeated requests for the information, on February 11, 1986, the Commission's Assistant Staff Director for Administration and the Budget Officer provided us with an explanation of how the $421,000 was spent. They said that $83,000 was charged to salaries and benefits of General Counsel staff who worked on preparing for the housing discrimination consultation/hearing and an additional $226,000 was spent elsewhere within the hearings budget activity. According to the Commission officials, $51,000 of the $226,000 was for overhead attributable to the budget activity, and $175,000 was spent on various other, unidentifiable, program activities. The Commission officials told us the remaining $112,000 was returned to the Treasury, the difference between the hearings budget activity's earmarked appropriation and the final obligation amount.

The $83,000 charged to the housing consultation/hearing project in fiscal year 1985 was derived as follows. The original charges to the housing project based on the monthly time charge reports prepared by the General Counsel staff involved were 313.5 staff days with a total cost of $47,500. In January 1986, the Assistant Staff Director for Administration requested the General Counsel to review the time charges for the project to determine if they were understated. The General Counsel reported, after his review, that he found some inaccuracies in the amount of time allocated to the project. On February 11, 1986, he increased the time charges for himself, his deputy, and 7 other employees by 153.5 days so that the total time charged equalled 467 days costing $83,000. Four of these employees, including the General Counsel, had not initially charged any time to the project.

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According to the General Counsel, his revisions were based on discussions with the five staff members who worked on the project and were still employed by the Commission and his knowledge of what the three staff members who had left the Commission were working on at the time. We interviewed the five General Counsel staff whose time charges were revised by the General Counsel and who were still employed by the Commission. One of these was the Deputy General Counsel. He said the changes to his time charges were appropriate. Only one of the four others agreed that the changes made were appropriate. Another said he had been told by the General Counsel that time charges were being changed, but he did not agree with the changes that were made to his time charges. The two others said that the General Counsel had not discussed the changes to their time charges with them and that the changes were not correct.

The project account code for the housing project which was the basis for time charges was assigned on July 22, 1985. On the original time charges for the project, there were no charges before July. According to the General Counsel, work was performed on the project before the approval of the project account code, but time was not charged to the project because no code existed. His revisions showed a total of 75.5 days for 7 employees charged to the project from February to June 1985. According to the project director, he delayed requesting a project code until final decisions were made by the Staff Director on topics for the hearing and the project's staffing. He requested a project account code on July 19, 1985. The project director told us that 75.5 staff days for 7 staff from February to June 1985 appeared high and he was unaware of that many people working on the project at that time. He acknowledged that some staff work was performed before July, but said only one staff member did substantial work.

Revised time charges for the General Counsel and the Deputy General Counsel accounted for about two-thirds of the 153.5 additional days charged to the housing project. These two individuals originally had no time charges to the project. According to the General Counsel, who was appointed to his position in May 1985, he was not aware that monthly time account reports were required until he was requested to review the time charges by the Assistant Staff Director for Administration in January 1986. He said that both he and his deputy had not been asked what projects they spent their time on by the General Counsel employee who initially prepared the reports.

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Year-end Reconciliation

We attempted to determine whether the Commission's allocation of costs during the year-end closing was consistent with the treatment of such costs at the time the budget was submitted to the Congress. However, we found that data on how the fiscal year 1985 budget was constructed was practically non-existent. After repeated requests for documentation, the Commission provided us on February 19, 1986, with a summary of agency expenditures by budget activity for the first month of fiscal year 1985 which also showed the allocation by budget activity of the fiscal year 1985 total budget authority.

We are concerned about the manner in which printing costs were treated in the Commission accounts. At the year-end closing the Commission treated printing costs ($240,000) as an overhead item to be allocated to the seven budget activities. However, the summary of agency expenditures document noted above showed estimated printing cost as a direct charge to the Publications Management Division, the only program office included in the Publications Preparation and Dissemination budget activity. Also, the Commission's justification for transferring $84,000 from the Publications Preparation and Dissemination budget activity to Hearings, Legal Analysis, and Legal Services when the earmarks were revised suggests that the Commission had originally anticipated that printing costs would be covered by the Publications Preparation and Dissemination budget activity. The justification, which was forwarded to the Director of the Office of Management and Budget on November 7, 1984, was as follows:

> "Because of the restructuring of the Commission in November 1983, most of the projects presently underway were started in the latter part of fiscal year 1984. This will result in fewer reports reaching the editing and printing stage in fiscal year 1985. The savings from not filling one position and from lower printing costs would be transferred to Activity II [Hearings, Legal Analysis, and Legal Services]." (Underlining added for emphasis)

A similar statement was placed in the record during hearings before the Appropriations Subcommittee on March 7, 1985.

If printing costs had been treated as a direct charge to Publications Preparation and Dissemination during the calculation of final obligations, the total charges to this activity would have been about $976,000 or about $223,000 over the $753,000 earmarked.

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As noted above, there are indications that the justification for the transfer of $84,000, as well as the Commission's fiscal year 1985 budget submission, treated printing costs as a direct charge to the Publications Preparation and Dissemination budget activity. However, the Budget Appendix for fiscal year 1985, which contained the agency's description of the work it intended to perform, suggests that printing costs may not have been considered as a direct charge. The Appendix contains the following explanation of the work to be performed in the Publications Preparation and Dissemination activity: "Commission publications are edited, illustrated, processed, and prepared for printing. Publications are distributed to those who implement the laws and policies, as well as to the general public." (Emphasis added). The use of the phrase "prepared for printing" rather than "printing costs" casts some doubt on whether the Commission intended to treat all printing costs as a direct charge to the Publications activity. We noted that the Commission's Budget Appendices for fiscal years 1984 and 1986 each contained the same description of the Publications Preparation and Dissemination budget activity as quoted above.

We discussed the printing cost issue with the Commission's current Budget Officer and her staff. She was not employed at the Commission at the time the fiscal year 1985 budget was constructed. A staff member, who worked on the budget submission, said printing costs were included as a direct charge to the Publications budget activity. However, the Budget Officer informed us that the issue had been discussed among Commission officials in June 1985 and that they had decided that the cost of printing should be included in overhead because (1) the printing function served the entire organization, (2) the cost of printing had been included in overhead previously, and (3) treatment of printing as overhead would permit the Commission to stay within its earmarks.

The Anti-Deficiency Act does not require that an agency follow its original budget estimates unless these estimates are specified in or incorporated by references in the appropriation act itself. The appropriation act did not specify where printing costs were to be charged. Thus, the Commission was under no legal obligation to follow its original budget submission. Furthermore, it is not clear whether Congress intended to include printing costs in the Publications Preparation and Dissemination budget activity. The earmarks do

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not describe the activities included under the heading "Publications Preparation and Dissemination." Where more than one of the budget activities earmarked may reasonably be construed as available for an expenditure not specifically mentioned under any of the activities, the determination of the agency as to which of the activities to use is presumed to be reasonable so long as the agency is consistent in charging that activity. In this instance, a reasonable basis exists for treating printing costs, which serve the needs of the entire organization, as part of overhead, and of allocating the overhead costs among the seven budget activities. Therefore, we cannot conclude that any violation of the Anti-Deficiency Act occurred.

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LOBBYING ISSUES

On July 29, 1985, the Commission's Chairman sent letters to four Members of Congress in which he expressed his views on an amendment to H.R. 2068, the Foreign Relations Authorization Act for fiscal years 1986 and 1987. According to the Chairman, the amendment would require the imposition of racial, sexual, and ethnic quotas in the State Department's hiring of foreign service officers. He stated that the amendment violated the policy of the Civil Rights Commission, as expressed in a policy statement adopted in January 1984.

As requested, we inquired into whether (1) the Chairman's actions violated any federal anti-lobbying restrictions; (2) the Commission had, in fact, taken the position cited by the Chairman either by virtue of staff findings or as a result of a formal Commission vote; and (3) the Chairman issued statements prior to the Commission taking a position on an issue.

Restrictions on lobbying by Government officials to support or oppose pending legislation are of two types -- restrictions in appropriation acts and criminal provisions. Many annual appropriations acts contain restrictions on the use of federal funds for lobbying activities. The Civil Rights Commission's fiscal year 1985 appropriation act did not contain such a restriction, but even if the restriction had been included, we do not believe it would have prohibited the Chairman from writing letters to Members of Congress in an attempt to directly influence the amendment in question. In interpreting such restrictions, we have recognize that every federal agency has a legitimate interest in communication with the public and with Congress regarding its policies and activities. We also reviewed the writing of these letters in light of the criminal provisions, 18 U.S.C. §1913, Lobbying With Appropriated Moneys, and found no conflict with those provisions.

The second question the requesters asked was if the Chairman's statements in his July 29, 1985, letters reflected an official position of the Civil Rights Commission on the subject of the bill amendment. The Chairman interpreted the amendment as calling for quotas. The Commission adopted a policy statement against quotas in January 1984 by a 6-2 vote. The policy statement, whose specific purpose was to deplore the city of Detroit's use of a racial quota in its promotions of police sergeants to lieutenants, also states a more general criticism of what it considers racially preferential employment techniques, citing quotas as an example, in both promotions and hiring, but does not mention goals. There is some question,

however, as to whether the bill amendment was referring to goals or quotas. To our knowledge, the Commission has not taken an official position on whether goals should be regarded as quotas. The Chairman, however, considers goals and quotas to be more alike than different and uses them in the same context. We concluded, therefore, that the anti-lobbying statutes would not prohibit the Chairman of the Commission, as its spokeman, from expressing views on matters where the agency has not previously taken an official position.

Speeches

We requested and obtained copies of written speeches given by the Commissioners from fiscal year 1983 to 1985. All speeches given were not in writing. Upon reviewing all of the written speeches, we found that the Chairman made the following statement in a prepared speech he delivered at least ten times to audiences in various parts of the country from March to July 1985.

> "I FEEL COMPELLED AT THIS POINT TO APPEAL TO EACH OF YOU TO ATTEMPT TO DEFEAT THE CIVIL RIGHTS RESTORATION ACT OF 1985. IT IS PROBABLY THE BROADEST INTERPRETATION OF THE CIVIL RIGHTS ACT OF 1964 EVER IMAGINED. THE BILLS BOTH H.R. 700 AND S. 272 WOULD RESULT IN A MASSIVE FEDERAL INTRUSION INTO BOTH STATE AND LOCAL GOVERNMENT AND THE PRIVATE SECTOR BY EXPANDING THE DEFINITION OF PROGRAM OR ACTIVITY COVERED BY FEDERAL AID AND BY EXPANDING THE AUTHORITY OF A FEDERAL AGENCY TO TERMINATE FEDERAL FUNDS. THE OPEN ENDED NATURE OF THE LEGISLATION AMOUNTS TO AN OPEN INVITATION TO THE FEDERAL GOVERNMENT TO EXTEND ITS REACH VIRTUALLY WITHOUT LIMIT THROUGHOUT AMERICAN SOCIETY AND FOR FEDERAL REGULATORS, PRIVATE LITIGANTS, AND FEDERAL JUDGES TO WORK THEIR WILL IN PLACES THEY HAVE NEVER BEEN BEFORE."

The statement above reflects the official views of the Civil Rights Commission as stated in a Commission policy statement dated March 5, 1985, and in testimony of the Chairman and the former Staff Director of the Commission before the Committees on Judiciary and Education and Labor on April 2, 1985. Although it reflects official Commission policy, the statement raises a matter of concern under the penal statute 18 U.S.C. §1913, Lobbying With Appropriated Moneys. While the Chairman stopped short of explicity requesting members of the public to contact their elected representatives, the context of the speech makes it clear that the listener is being urged to do so. The statement appears to represent the type of remarks the restrictions on lobbying by government officials attempt to limit.

The statute reads as follows:

"No part of the money appropriated by any enactment of the Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business."

"Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section, shall be fined not more than $500 or imprisoned not more than one year, or both; and after notice and hearing by the superior officer vested with the power of removing him, shall be removed from office or employment."

The above statute contains fine and imprisonment provisions, and its enforcement is the responsibility of the Department of Justice. To our knowledge, there has never been a prosecution under this statute. Moreover, a review of the case law indicates that only a few federal court decisions have cited the statute.

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STATE ADVISORY COMMITTEES

A number of issues were raised concerning the state advisory committees. These included allegations that (1) the Commission headquarters staff was excessively involved in the 1985 committee rechartering process, particularly the nomination of committee members and chairs (2) the committees did not meet the membership criteria cited in Commission regulations; (3) few committee reports were issued and many reports were held up in the Staff Director's office; and (4) the committees were not seeking input from regional offices as they had done in the past.

We were requested to (1) examine the rechartering of the state advisory committees in 1985 and whether they met the standards of diverse membership set forth in Commission regulations, (2) determine the extent to which committee reports have been printed and released to the public and whether reports are still awaiting review by the Staff Director, and (3) determine whether the role of the committees has changed, including whether regional offices are allowed to provide assistance to the committees.

The state advisory committees, as well as the regional staff, are the "eyes and ears" of the Commission in the states and the District of Columbia. According to Commission regulations (45 CFR 703), the committees advise the Commission on matters relating to alleged deprivation of the right to vote or the denial of equal protection of the laws under the constitution, advise the Commission on matters of mutual concern, receive input from those within the state regarding inquiries conducted by the committee, initiate and forward advice and recommendations to the Commission on those matters they have studied, and assist the Commission with its clearinghouse function of compiling and distributing information to interested persons on such areas as minorities' and women's civil rights, aging, and the handicapped. Generally, each committee is limited to matters within its state. The Commission's 10 regional offices provide support services to the committees in addition to performing other regional functions of the Commission.

According to the Commission, costs related to committee activities for fiscal years 1983, 1984, and 1985 were $2.2, $1.6, and $2.0 million, respectively. These costs include the committee members' travel and per diem and regional staff travel, per diem, and salaries associated with committee activities, and other costs such as meeting space and court reporters. Committee members do not receive compensation for their services.

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Committees' Makeup and Selection Process

Commission regulations (45 CFR 703.5) and the Federal Advisory Committee Act (P.L. 92-463) provide general guidance on the makeup of the state advisory committees. There are committees in each of the 50 states plus the District of Columbia. The act stipulates that committee membership for all federal advisory committees should be fairly balanced in terms of the points of views represented and the functions to be performed. The Commission regulations also require committee membership to be reflective of the ethnic, racial, and religious composition of each state as well as representative with respect to sex, political affiliation, age, and handicap status.

Before the 1985 rechartering[1] of the Commission's state advisory committees, the Commissioners had selected committee members based mainly on recommendations from the Commission's regional offices. According to the Assistant Staff Director for Regional Programs, recommendations were made by regional directors, committee chairpersons, and individual Commissioners, but the majority came from the regional directors. Regional directors and their staff in four regional offices that we interviewed agreed that the recommendation of committee members was largely determined by the regional offices; and those recommendations were nearly always accepted by the Commissioners. One regional director said prospective new members were interviewed by regional staff before being recommended and a principal criterion used in selecting nominees was a fair representation of minority groups. Another regional director told us that committee chairpersons and regional directors agreed on nominees before they were recommended to headquarters. For the 1985 rechartering, the regions continued to make their recommendations, however, headquarters' officials controlled the nominating process.

Commission regulations state that each state advisory committee shall consist of at least 11 members; however, exceptions may be made by the Commissioners in special circumstances. Before 1985, the size of the committees varied, ranging from 11 to 33 members per state. The recommended committee size in the past, per Commission guidelines, was 11 members plus 1 additional member for each million of population

[1]In accordance with the Federal Advisory Committee Act, advisory committees are generally chartered for a 2-year period and must be rechartered to carry on their duties. The Commission's 1985 rechartering occurred between January and May 1985 and its previous chartering occurred between December 1981 and December 1983.

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in a state. Thus, states such as Rhode Island and Delaware had the minimum number of members, and New York and California had the largest numbers.

In March 1984, the Commissioners approved the Staff Director's recommendation that committee membership in each state be set at 11. According to the Staff Director, there appeared to be no strong justification to tie the size of the committees to population and larger sizes were too costly. She also noted that existing guidelines relating to diversity of membership could be met with the 11-member limitation. Smaller committees, according to the Staff Director, had better attendance at their meetings and had greater member involvement in program activities. She acknowledged at the March 1984 Commission meeting that the committees could ask for an exemption to exceed the 11-member limitation.

The state advisory committees were rechartered and their members were approved in Commission meetings during the period of January through May 1985. All committees and their members were approved with the exception of the District of Columbia. That committee has yet to be rechartered.

According to the Assistant Staff Director for Regional Programs, the 1985 advisory committee rechartering process began in October 1984. The regional directors submitted the recharter packages, including the recommended committee members, to headquarters through the Commission's Office of Regional Programs. The 561 committee members recommended by the regional directors (11 members, including a recommended chairperson, for each the 51 committees) included nominations of some of those already serving on the committees plus some new individuals. However, the Staff Director and the Assistant Staff Director for Programs and Policy recommended 280 new committee members as substitutes for 280 of the regional nominees. These two headquarters officials also nominated a number of committee members that had been nominated by the regional directors.

Furthermore, the two headquarters officials nominated different chairpersons for 47 of the 50 committees. According to the Assistant Staff Director for Regional Programs, the committee chairpersons have more influence than the other committee members. The chairpersons generally set the agenda for committee meetings, attend conferences such as the Annual State Advisory Committee Chairmen's Conference, and have a network among themselves and Commission officials in headquarters.

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The Staff Director and Assistant Staff Director for Programs and Policy recommended as many as eight names to each advisory committee. The Staff Director, through the Assistant Staff Director for Regional Programs, then told the regional directors to recommend the remaining nominees from the standpoint of improving committee balance. The Assistant Staff Director for Regional Programs advised the Assistant Staff Director for Programs and Policy that it would be difficult if not impossible to do for some of the committees. The regional directors resubmitted the rechartering packages incorporating the Staff Director's and the Assistant Staff Director for Programs and Policy's recommendations.

Table XI.1 shows the source of the recommendations by state of the committee members approved by the Commissioners. Those nominations by the Staff Director and the Assistant Director for Programs and Policy that were also nominated by the regional directors are counted in the regional column. The Washington, D.C. committee nominees are not included because they had not been forwarded to the Commissioners as of January 24, 1986.

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Table XI.1
Source of State Advisory Committee Members Recommendations for the 1985 Rechartering by State

State	Source of Recommendations: Staff Director and Assistant Staff Director Programs and Policy	Source of Recommendations: Regional directors
Alabama	5	6
Alaska	4	7
Arizona	6	5
Arkansas	6	5
California	7	4
Colorado	7	4
Connecticut	8	3
Delaware	6	5
Florida	7	4
Georgia	4	7
Hawaii	1	10
Idaho	4	7
Illinois	5	6
Indiana	6	5
Iowa	6	5
Kansas	6	5
Kentucky	5	6
Louisiana	8	3
Maine	4	7
Maryland	6	5
Massachusetts	8	3
Michigan	9	2
Minnesota	5	6
Mississippi	4	7
Missouri	5	6
Montana	4	7
Nebraska	4	7
Nevada	5	6
New Hampshire	5	6
New Jersey	8	3
New Mexico	4	7
New York	8	3
North Carolina	5	6
North Dakota	0	11
Ohio	6	5
Oklahoma	7	4
Oregon	6	5
Pennsylvania	7	4
Rhode Island	3	8
South Carolina	2	9
South Dakota	7	4
Tennessee	6	5
Texas	6	5
Utah	8	3
Vermont	6	5
Virginia	8	3
Washington	7	4
West Virginia	7	4
Wisconsin	6	5
Wyoming	3	8
Total	280	270

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We discussed the new committees' composition with four regional office directors and their staffs. They were equally divided as to whether the new committee members met the criteria of representing the various population groups, but the majority thought the new committee has not met the balanced point of view criteria. There was agreement that the membership and balanced point of view criteria were met by the previous committees.

Commission guidelines for meeting the balanced point of view criteria call for the committees to be diverse and include minority groups, women's rights representatives, civil rights leaders and persons with substantive or procedural skills that can facilitate the committee's work. Prior to 1985, the General Services Administration's Committee Management Secretariat, which is responsible for overseeing and reporting on federal advisory committee activities, required the Commission to describe how each committee's membership met the balanced point of view criteria. In 1983 and 1984, the Commission reported that the criteria had been met. The Secretariat deleted this reporting requirement in 1985.

Tables XI.2 and XI.3 show the comparable aggregate characteristics for representation of the various population groups of the 1985 and previous committees and chairpersons as provided to us by the Commission.

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Table XI.2
Characteristics of State Advisory Committees

	1985 recharter[a]	Previous charter
	(percentages)	
Race		
American Indian	4.4	6.9
Asian American	2.7	3.4
Black	25.1	28.3
Hispanic	8.5	11.7
White	58.9	49.0
Other	.4	.7
Total	100.0	100.0
Religion		
Catholic	22.5	23.2
Jewish	20.9	11.0
Protestant	45.7	52.2
Other	10.9	13.6
Total	100.0	100.0
Sex		
Female	35.3	45.6
Male	64.7	54.4
Total	100.0	100.0
Political Affiliation		
Democrat	45.7	43.5
Republican	35.2	36.5
Independent	19.1	20.0
Total	100.0	100.0
Age		
Under 40	21.3	25.9
Over 40	78.7	74.1
Total	100.0	100.0

[a]Does not include Washington, D.C. committee.

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Table XI.3
Characteristics of State Advisory Committee Chairpersons

	1985 recharter[a]	Previous charter
	(percentages)	
Race		
American Indian	4.0	3.9
Asian American	0.0	11.8
Black	18.0	41.2
Hispanic	6.0	13.7
White	72.0	29.4
Other	0.0	0.0
Total	100.0	100.0
Religion		
Catholic	14.0	13.7
Jewish	48.0	11.8
Protestant	30.0	62.7
Other	8.0	11.8
Total	100.0	100.0
Sex		
Female	8.0	39.2
Male	92.0	60.8
Total	100.0	100.0
Political Affiliation		
Democrat	40.0	52.9
Republican	44.0	25.9
Independent	16.0	21.6
Total	100.0	100.0
Age		
Under 40	24.0	25.5
Over 40	76.0	74.5
Total	100.0	100.0

[a]Does not include Washington, D.C. chairperson.

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Regional Office Assistance

Administrative assistance to the committees by the regional offices has not changed with the 1985 rechartering, according to those 12 regional officials we interviewed. However, the regional officials said that the nature of their involvement with the committees has changed. Several officials indicated that the current committees are obtaining less input from regional office staff in identifying issues. They said that they cannot express views to the committees as they have in the past; one said that he must get headquarters' approval before presenting ideas to the committees. Another said that he was directed by headquarters not to suggest projects or issues. Before the 1985 rechartering, according to several of the regional officials, regional staff exercised more control over the committees in project identification.

Committee Meetings

There are four types of advisory committee meetings: planning, special, factfinding, and conference. Planning meetings are to plan programs, discuss projects, establish priorities, gather factual data, and review reports before sending them to the Commission. Special meetings, which are not formal meetings, involve investigative interviews, procedural planning, and followup activities at which no decisions are reached. Factfinding meetings are held for the purpose of obtaining information from government officials and private citizens on a topic being studied by the committee. These meetings differ from a Commission hearing primarily because the committees do not have subpoena power and cannot take testimony from witnesses under oath. Finally, conferences are meetings whereby the committees exchange information with experts on specific topics.

The total number of committee meetings increased during the fiscal year 1983 to 1985 time period as indicated by table XI.4. The 3-year figures show the number of planning meetings is increasing. The number of special, factfinding, and conference meetings declined in fiscal year 1984; however, special meetings increased in 1985 over 1984. The number of factfinding meetings went from 12 in fiscal year 1983 to none in 1985. Similarly, the number of conferences continued to decrease in 1985.

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Table XI.4
State Advisory Committee Meetings
Fiscal Years 1983-1985

Type of meetings	Fiscal year 1983	1984	1985
Planning	170	170	235
Special	69	40	54
Factfinding	12	3	0
Conference	10	9	5
Total	261	222	294

Committee Products

The state advisory committees' primary method of providing advice to the Commission until fiscal year 1985 was reports. In fiscal year 1985, the committees began using briefing memoranda as a way to advise the Commissioners. According to a Commission official, the briefing memoranda concept grew out of a perceived need by the Staff Director and regional directors for an alternative to the formal committee reports. Briefing memoranda are submitted to the Commissioners, through the Staff Director's office, for informational purposes only. There have been a few instances, according to the Assistant Staff Director for Regional Programs, where the briefing memoranda were also provided to regional directors. They are not published.

The number of advisory committee reports released by the Commission has declined since fiscal year 1983, going from 36 in that year to 3 and 2, respectively, in fiscal years 1984 and 1985. Moreover, the two committee reports released in fiscal year 1985 by the Commission were not published as Commission documents. The two advisory committees were given permission by the Commissioners to release the reports within their states. Eight committee reports were approved for release by the Commissioners during the first half of fiscal year 1986. As of March 1986, five committee reports were in process at Commission headquarters, but had not been submitted to the Commissioners. All of these reports were started by the committees before the 1985 rechartering.

Projects-in-process by the advisory committees, which generally result in reports, have also been declining since fiscal year 1983. At the end of fiscal year 1983, there were 40 ongoing projects and 29 and 14 at the end of fiscal years 1984 and 1985, respectively. As of March 1986, there were 6 ongoing projects. Projects-in-process include projects which have been

approved by the Staff Director and in which fieldwork, research, or report drafting has begun. Table XI.5 shows the number of committee reports, briefing memoranda, and projects-in-process during the fiscal year 1983 to 1985 time period.

As of March 1986, there were 11 concepts for projects approved by the Staff Director. A concept is a document that briefly outlines the essential purpose, methodology, and justification for a proposed project. Fieldwork can not begin on the concept until the project proposal has been approved by the Staff Director. The proposal is the justification and plan for a project which describes the purpose, scope, and methodology and includes milestone tasks, target dates, and budget.

Table XI.5
State Advisory Committee
Products and Projects-in-Process
Fiscal Years 1983-1985

Products and projects	Fiscal year 1983	1984	1985
Reports	36	3	2
Briefing memoranda	--	--	24
Projects-in-process	40	29[a]	14[b]

[a]Includes eight projects subsequently converted to briefing memoranda and one project subsequently dropped.

[b]Includes one project subsequently converted to a briefing memorandum and one project subsequently dropped.

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USE OF COMMISSION AUTOMOBILE

Charges were made that the Commission's automobile was used for other than official purposes such as transporting the Staff Director between her home and work.

We were requested to examine the use of the Commission automobile to determine if its use was consistent with regulations governing official vehicle use.[1]

The U.S. Commission on Civil Rights leased an automobile, a 1983 Ford Escort station wagon, for use by its warehouse in Alexandria, Virginia, to transport publications and other materials to the Commission and other locations in the Washington, D.C., metropolitan area. There were two designated drivers who worked primarily at the warehouse.

The Commission's automobile was housed for a 3-month period in early 1985 at its headquarters in downtown Washington, D.C., from late January through late April 1985. The two Commission drivers from the warehouse did not drive the automobile during this period. A new driver was hired by the Commission on January 28, 1985. His driving duties included transporting Commissioners, the Staff Director, and other Commission employees to meetings and other official functions, providing messenger/courier services, and making daily runs to the warehouse for pickup/delivery of publications and materials. The driver also had other clerical and administrative duties.

The relocation of the automobile was made at the request of the Staff Director (who left the Commission on April 29, 1985), who also assigned the newly created driver position to the Office of the Deputy Staff Director. According to the former Deputy Staff Director, the new driver reported to the Staff Director's office.

The new driver left the Commission on April 24, 1985. The driver's position was not refilled, and the automobile was returned to the warehouse. Upon return to the warehouse, the

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[1]Although the basic authority for the use of government motor vehicles (31 U.S.C. §1344) does not define official purpose, it does state an official purpose does not include transporting officers or employees of the government, with certain exceptions, between their domiciles and places of employment. The exceptions do not apply to the Commission.

automobile continued to be driven by the former two drivers for transporting publications and other materials to the Commission and other locations in the metropolitan area.

A Commission administrative instruction requires that trip logs must be prepared by each Commission employee who drives the automobile, accounting for each trip, showing mileage and points of departure and arrival. The completed logs were to be sent to the Commission's Administrative Services Division of the Office of Management at the end of each calendar year.

In October 1985, we requested the trip logs for the automobile covering the period December 1, 1983, to October 1985. The trip logs were provided covering the period January 3, 1983, to June 30, 1983, and April 24, 1985, to October 7, 1985. The trip logs were not provided for the period July 1, 1983, to April 23, 1985, a 22-month period. According to the Assistant Staff Director for Administration, he learned that the trip logs were missing when we requested the documents. According to Commission officials, the trip logs covering the period July 1, 1983, to January 28, 1985, when the new driver was hired, were left in the automobile contrary to the administrative instruction previously mentioned. However, the new driver told us that he had not seen the logs for that period and did not know their whereabouts. He acknowledged that he took the logs he prepared during the 3-month period he drove the automobile with him when he left the Commission in April 1985. He said he disposed of them approximately 6 months later. The administrative instruction requiring the trip logs has since been amended to require completed trip logs be sent to the Administrative Services Division at the end of each month instead of annually.

The former driver also told us on November 25, 1985, that he drove Commissioners to meetings and used the automobile for official functions. He also told us that he did not transport any Commission employee between home and work.

In December 1985, the Assistant Staff Director for Administration asked both the former driver and the former Staff Director for statements explaining how the automobile was used for the 3-month period ending in April 1985. They stated in writing that in addition to his messenger and clerical duties, the former driver drove the Staff Director and Commissioners to meetings and other official functions.

Also, we interviewed a Commission employee who was one of the designated drivers of the automobile during the period of July 1, 1983, through January 1985. He stated that the automobile was used only for official purposes during that time.

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Without the missing trip logs, we could not verify that the Commission automobile was used only for official purposes while it was stationed at Commission headquarters or its warehouse. Our review of available trip logs for the period January 3 to June 30, 1983, and April 24 to October 7, 1985, indicated the automobile was used for official purposes for the periods covered by such records.

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CONTRACTING TO SUPPORT THE COMMISSION'S MISSION

It was alleged that contractors were being used to perform work that should have been done by the Commission's career staff.

We were requested to examine the extent of work contracted by the Commission, including costs, justification, and whether such contracts were subject to competitive bidding.

We reviewed the Commission's contract files for fiscal years 1984 and 1985 to determine the number, types, and costs of mission related work for which a contractor was used. For purposes of analysis, we divided the mission related contract work into three categories:

--direct mission work, such as purchase orders for the preparation of papers for hearings;

--mission support work, such as room rentals and court reporters for Commission meetings; and

--miscellaneous, such as subscriptions to civil rights related journals.

Contracts not directly related to the mission of the agency, such as typewriter repair and supplies, were excluded from our analysis.

During fiscal years 1984 and 1985, the Commission obligated a total of $930,291 on 622 mission-related contracts. The number of contracts in effect for each of the 2 years was about the same (315 and 307), but the 1984 obligations were for much greater amounts ($722,337 in 1984 as compared to $207,954 in 1985). According to the Assistant Staff Director for Administration, the contracts were used to supplement Commission capability or obtain capability that did not exist in the Commission.

Direct mission work accounted for the largest amounts of the contract obligations ($607,313 in 1984 and $124,592 in 1985). The largest obligations for direct mission work were in the Office of Programs and Policy Review[1] ($506,644) in fiscal

[1]The functions of the Office of Programs and Policy Review were reorganized into the Office of Research and Office of Programs and Policy in July 1984.

year 1984 and in the Office of Programs and Policy ($82,742) in fiscal year 1985. For the most part, the direct mission contracts were for academic papers commissioned from university professors for presentation/use at Commission hearings and consultations. Individually, obligations under these contracts ranged from $300 to $1,000.

Tables XIII.1 and XIII.2 show the contracting activity for the 2 years by category and program office.

Federal acquisition regulations generally require competitive bidding for contracts exceeding $25,000. Two Commission contracts, both in fiscal year 1984, were this large. However, only one of these was competitively bid. This contract was awarded to the System Development Corporation to prepare a report on the effectiveness of various public school desegregation plans. The initial contract award was $444,364.

The other contract over $25,000 was awarded to the National Committee Against Discrimination in Housing to prepare a nationwide directory of private fair housing agencies. The initial contract award was $53,280. The contract was not competitively bid because it was an unsolicited proposal. According to Federal Acquisition Regulation (48 C.F.R. 15.507(b)), such a negotiated noncompetitive contract can be awarded when the unsolicited proposal is innovative or unique, independently originated and developed by the offeror, prepared without government supervision, could benefit the agency's research or other mission responsibilities, receives a favorable comprehensive evaluation, and facts and circumstances exist to preclude competition. Although documentation in the Commission's contract file did not specifically say the criteria were met, the Commission's Solicitor, who is also the agency's contracting officer, told us the proposal met all criteria. The next largest contract awarded in fiscal years 1984 and 1985 was for $19,664.

Difficulties arose in the latter part of fiscal year 1985 on the school desegregation study contract. After reporting critical personnel losses, the contractor, System Development Corporation, entered into a novation agreement with Unicon Research Corporation in June 1985 (the Comission concurred with the arrangement) whereby Unicon would complete the study. Since the change in contractors, there has been controversy surrounding the study. Specifically, one of the advisory panel members to the study, in his letter of resignation to the Commission on October 25, 1985, stated that "the study has been so seriously mismanaged and is so flawed in its current organization that it cannot be carried out in a way that will

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either be seen as professionally respectable or fair." A representative of the Unicon Research Corporation, the chairman of the advisory panel, and the advisory panel member who resigned appeared before the Commissioners' November 12 and December 10, 1985, meetings to present their views and concerns about the study. At the December 1985 meeting, the Commissioners agreed to evaluate, with Commission staff assistance, whether Unicon will be able to complete the study as envisioned in the original contract. This evaluation was underway when we completed our work.

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Table XIII.1
Mission-Related Contract Obligations
Fiscal Year 1984

	Direct mission		Mission support		Miscellaneous		Total	
	Amount[1]	Number	Amount[1]	Number	Amount[1]	Number	Amount[1]	Number
Headquarters offices								
Congressional and Public Affairs	$27,261	6	$ 0	0	$ 0	0	$27,261	6
General Counsel	16,000	16	5,501	1	0	0	21,501	17
Management	750	1	17,140	14	36,778	57	55,208	72
Programs and Policy Review	506,644	3	1,070	4	2,334	10	510,048	17
Staff Director	9,[illegible]0	14	2,936	2	0	0	12,286	16
Equal Employment Opportunity	0	0	85	1	750	1	835	2
Planning and Coordination	0	0	850	1	0	0	850	1
Unidentified	47,308	5	10,028	5	8,737	44	66,072	54
Subtotals	$607,313	45	$37,609	28	$48,598	112	$694,061	185
Regions								
Central States	$ 0	0	$1,919	12	$2,814	12	$4,733	24
Eastern	0	0	475	3	536	7	1,011	10
Midwestern	0	0	1,065	13	1,794	7	2,859	20
Northwestern	0	0	0	0	1,197	1	1,197	1
Rocky Mountain	0	0	0	0	1,197	1	1,197	1
Southern	0	0	3,384	14	130	2	3,514	16
Southwestern	0	0	3,265	14	6,715	17	9,980	31
Western	0	0	1,408	9	2,278	17	3,686	26
Unidentified	0	0	100	1	0	0	100	1
Subtotals	$ 0	0	$11,616	66	$16,660	64	$ 28,276	130
Totals	$607,313	45	$49,225	94	$65,258	176	$722,337	315

[1]Amounts may not add because of rounding.

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Table XIII.2
Mission-Related Contract Obligations
Fiscal Year 1985

	Direct mission		Mission support		Miscellaneous		Total	
	Amount[1]	Number	Amount[1]	Number	Amount[1]	Number	Amount[1]	Number
Headquarters offices								
General Counsel	$ 14,000	14	$ 2,799	2	$ 111	3	$ 16,910	19
Management	800	1	14,567	11	15,350	30	30,707	42
Programs and Policy•	82,742	12	125	1	650	2	83,517	15
Research	300	1	85	1	2,833	12	3,218	14
Staff Director	15,000	5	449	1	0	0	15,449	6
Unidentified	11,750	15	10,056	20	11,993	17	33,799	52
Subtotals	$124,592	48	$28,071	36	$30,937	64	$183,600	148
Regions								
Central States	$ 0	0	$ 982	14	$ 1,308	7	$ 2,291	21
Eastern	0	0	1,340	10	1,606	11	2,946	21
Mid-Atlantic	0	0	4,815	14	3,195	20	8,010	34
Midwestern	0	0	0	0	522	6	522	6
New England	0	0	190	2	1,072	10	1,262	12
Northwestern	0	0	50	1	1,340	5	1,390	6
Rocky Mountain	0	0	1,381	12	1,850	24	3,230	36
Southern	0	0	147	3	206	1	353	4
Southwestern	0	0	3,423	15	770	1	4,193	16
Western	0	0	72	2	86	1	157	3
Subtotals	$ 0	0	$12,400	73	$11,954	86	$ 24,354	159
Totals	$124,592	48	$40,471	109	$42,891	150	$207,954	307

[1]Amounts may not add because of rounding.

ATTACHMENT XIII